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Supreme Court, U.S.
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In The

Supreme Court Of The United States

October Term, 2001

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COX CABLE ADVISORY COUNCIL

Petitioner,

v.

DEPARTMENT OF PUBLIC UTILITY
CONTROL, COXCOM CONNECTICUT, INC.,
AND THE OFFICE OF CONSUMER COUNSEL

Respondents.

◆

PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

◆

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

◆

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QUESTIONS PRESENTED

Did the Connecticut Supreme Court decide an important question of federal law that has not been, but should be, settled by this Court and, in deciding said question, did it do so in a manner that conflicts with relevant decisions of this Court and United States Courts of Appeals?

LIST OF PARTIES

In both the Superior Court for the Judicial District of New Britain and the Connecticut Supreme Court, the plaintiff is listed as the Cox Cable Advisory Council and the defendants were the Department of Public Utility Control, CoxCom Connecticut, Inc. d/b/a Cox Communications Connecticut/Manchester and the Office of Consumer Counsel.

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IN THE SUPREME COURT OF THE
UNITED STATES OCTOBER TERM, 2001

COX CABLE ADVISORY COUNCIL

Petitioner,

v.

DEPARTMENT OF PUBLIC
UTILITY CONTROL,
COXCOM CONNECTICUT, INC.
AND OFFICE OF
CONSUMER COUNSEL

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

The Petitioner, Cox Cable Advisory Council, prays that this Court issue a writ of certiorari to review the judgment of the Connecticut Supreme Court.

OPINIONS OF THE COURTS BELOW

The opinion of the Connecticut Supreme Court entered on January 15, 2002, is reported at Cox Cable Advisory Council v. Dept. of Public Utility Control, 259 Conn. 56 (2002), and is printed in the appendix to this petition at (A-1). The Court's order of February 26, 2002, denying the Office of Consumer Council's motion for reconsideration en banc filed January 25, 2002, is printed in the appendix to this petition at (A-21).

The ruling of the Superior Court for the Judicial District of New Britain (Henry S. Cohn, J.) on the motions to dismiss entered on November 17, 2000, is printed in the appendix to this petition at (A-22).

JURISDICTION

The Connecticut Supreme Court entered judgment on January 15, 2002, and denied the motion for reconsideration en banc on February 26, 2002. The Petitioner invokes the jurisdiction of this Court under 28 U.S.C. Sec. 1257 (a). This petition is timely filed pursuant to Supreme Court Rule 13.3.

STATUTORY PROVISIONS INVOLVED

[REPRINTED IN APPENDIX]

STATEMENT OF THE CASE

The Defendant, Department of Public Utility Control (the "Department" or "DPUC"), is a state agency authorized, pursuant to Connecticut General Statutes (C.G.S.) Section 16-331, to grant certificates of public convenience and necessity, and renewals thereof, for the operation of community antenna television systems within the State of Connecticut. (A-58). The Defendant, CoxCom Connecticut, Inc. d/b/a Cox Communications Connecticut/Manchester (the "Company"), is a Delaware corporation authorized to do business in the State of Connecticut and, pursuant to a certificate of public convenience and necessity issued by the Department, is engaged in the sale and distribution of cable television programming in the six-town franchise area, which comprises the towns of Glastonbury, Manchester, Newington, Rocky Hill, South Windsor and Wethersfield. The Plaintiff is the Advisory Council for said franchise, having been established pursuant to C.G.S. Sec. 16-331 (c). (A-60). On April 4, 1990, pursuant to its decision in Doc. #87-01-06, Cox Cable Greater Hartford, Inc., Renewal of Franchise, the Department granted the Company a renewal of its franchise for a term which expired on December 31, 1999.

On April 7, 1998, the Company filed with the Department an application for the renewal of its franchise (Doc. #98-04-08, Application of CoxCom, Inc. d/b/a Cox Communications Connecticut/Manchester for Franchise Renewal). The Company and the Office of Consumer Counsel (the "OCC") were designated parties in that proceeding and the Plaintiff was designated an intervenor pursuant to C.G.S. Section 16-331(c)(2). (A-60).

A community needs assessment was ordered by the Department and conducted by Hickory Mountain Associates, Inc., pursuant to C.G.S. 16-331 (f), (A-65), and the consultant's report was filed on March 23, 1999. In June and July of 1999, the Department held well-attended public hearings in Manchester and Newington and four evidentiary hearings at its facilities in New Britain in which the Plaintiff and the parties introduced the testimony of a number of witnesses, together with numerous documentary exhibits. Although the renewal of the franchise was not in dispute, many of its proposed terms were hotly contested.

The Department issued its draft decision on November 22, 1999 and exceptions were filed by both the Plaintiff and the OCC. The Department issued its Decision on December 22, 1999, from which the Plaintiff and the OCC appealed to the Superior Court for the Judicial District of New Britain, pursuant to Connecticut's Uniform Administrative Procedures Act, C.G.S. Section 4-183. The appeals were separate and did not contest the renewal of the franchise, but raised numerous issues concerning the DPUC's interpretation and application of state statutes and regulations, the agency's compliance with state regulatory requirement, as well as its own prior rulings, community access policies and funding, community access budget irregularities, cable-related community needs, and conditions to be included in the franchise agreement.

In the Plaintiff's appeal, motions to dismiss were filed by both the Company and the Department. Pursuant to C.G.S. 52-128, (A-77), the Plaintiff, within thirty days after the return date of its appeal, amended its complaint providing specific detail with respect to its allegations of impropriety on the part of the Department in structuring the terms of the renewed franchise. Both motions raised questions of jurisdiction, aggrievement and the efficacy of the Plaintiff's amended complaint. The Company's motion added the issue of federal preemption. The Company filed a similar motion in the OCC's appeal and, both Plaintiffs, having filed timely objections thereto, oral arguments were heard on September 11, 2000 and the trial court issued its ruling on November 17, 2000. (A-23).

The trial court granted the motions to dismiss on the basis of state law issues of jurisdiction and aggrievement and refrained to rule on the federal issue. In the OCC's appeal, however, the court ruled that the OCC was not preempted from appealing. That case was later disposed of on the merits.

The Plaintiff then appealed to the Connecticut Appellate Court. Over the Plaintiff's objection, the Company inserted the issue of federal preemption as an alternate ground upon which to affirm the lower court's decision. On June 11, 2001, the case was transferred to the Connecticut Supreme Court. (A-79).

On January 15, 2002, the Connecticut Supreme Court issued its decision in which it ruled that not only was this appeal preempted by federal law, but that the OCC's appeal should likewise have been preempted and held that C.G.S. Section 16-2a, which specifically authorizes the OCC to initiate such appeals, in this context was unconstitutional. (A-1). The court failed to address the issues of state law which formed the basis of the lower court's decision and arrived at its decision despite the absence of express preemptive language in the federal statute and solely on the basis of an unsubstantiated statement of intent contained in House Report 98-934, pg. 75. (A-78).

On January 25, 2002, the OCC filed its motion for reconsideration en banc, which was denied by the court on February 26, 2002. (A-22).

REASONS FOR GRANTING THE WRIT

The decision of the court below is in conflict with decisions of this Court and with those of the U.S. Courts of Appeals for the Second, Fourth, Sixth, Seventh, Eighth and Tenth Circuits and, if allowed to stand, will result in serious negative consequences in the cable television industry nationwide in derogation of the express purposes of the Cable Communications Policy Act of 1984 and subsequent amendments thereto. This holding will unquestionably lead to chaos in the industry by undermining the federally sanctioned authority of local legislative bodies and regulatory agencies and thwarting the stated Congressional objectives of promoting the interests of consumer protection, while establishing fairness and consistency in the regulation of an essential industry. Instead of settling legal questions within the parameters of a proven system of judicial review, this decision opens the door to instability, regulatory tyranny and erosion of consumer confidence.

I. IN ADDRESSING THE FEDERAL QUESTION BEFORE RESOLVING STATE LAW ISSUES, THE COURT BELOW FAILED TO OBSERVE THE ASHWANDER AVOIDANCE RULE.

a) *Background.*

Most of the Connecticut statutes and regulations pertaining to or impacting the cable industry were adopted prior to the effective date of the Cable Communications Policy Act of 1984 (the "Cable Act")[1] and conform to the parameters established by the federal law. The Superior

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[1] C.G.S. Sec. 4-183 (A-52) originated with 1971 Public Act 854; C.G.S. Sec. 16-2a (A-55) with 1974 Public Act 216; C.G.S. Sec. 16-331 (A-58) with 1963 Public Act 425; and C.G.S. Sec. 16-333f (A-73) with 1981 Public Act 393.

Court, in its decision on the motions to dismiss, recognized that the Connecticut scheme of cable regulation predated the Cable Act (A-28) and this was an essential element of its decision to rule against preemption with respect to C.G.S. Sec. 16-2a in the OCC's appeal (A-55). None of the parties in this action have suggested that any state enactment in conflict with federal law would not be preempted under the Supremacy Clause.

In the instant case, the Petitioner raised more than thirty issues which it sought to submit to the process of judicial review. These involved questions relating to the Company's performance during the prior franchise term and the DPUC's apparent reversal of its prior rulings relating to community access policy and the provision of community access facilities throughout the franchise. The Petitioner raised questions concerning community access budget irregularities, the equitable allocation of community access budget resources and the determination of cable-related community needs, all of which are recognized by the Cable Act as the legitimate subjects of state regulation. 47 U.S.C. Sec. 531 (a), (b) and (c), (A-33, 34), and 47 U.S.C. Sec. 552 (d), (A-47).

The franchise renewal process conducted by the DPUC was lengthy and painstaking. Two well-attended public hearings were held and there were four days of evidentiary hearings in the course of which a plethora of testimony and documentary evidence was presented on a number of issues raised by the Petitioner and the OCC. Virtually all of the matters in dispute were resolved by the DPUC in the Company's favor and separate appeals were thereafter taken by the Petitioner and the OCC pursuant to C.G.S. Secs. 4-183, 16-2a and 16-35(A-52, 55 and 58). Nowhere in this laborious process did the Petitioner or the OCC contest the renewal of the Company's franchise. On the contrary, it was clear throughout that the Petitioner and the OCC were focusing their concerns on subordinate issues within the purview of state laws and regulations.

The motions to dismiss filed by the Company and the DPUC raised a number of issues relating to the interpretation of state laws governing administrative appeals. Among these were questions of jurisdiction, standing, aggrievement, pleading and the efficacy of an amended complaint filed pursuant to C.G.S. Sec. 52-128 (A-77). The Company, however, in its motion included, as an additional ground for dismissal, the contention that such appeals are preempted by the Cable Act. (A-27).

The Company pointed to 47 U.S.C Sec. 555, (A-49), which provides that, within 120 days after notice of an adverse determination by a franchising authority in a proceeding for the granting, modification or renewal of a franchise, the cable operator may appeal to a state or federal court. Neither this section, nor any other section of the act, specifically mentions appeals by any other party. The House Report (p. 75), however, without citing any authority or any supportive language in the Cable Act, states that "If the incumbent is granted renewal pursuant to his proposal, there is no right of appeal by any other party." (A-78). The statement is not explained anywhere in the House Report and its origin is a complete mystery.

The trial court, in the case at bar, refused to address the federal question, but, dismissed upon a finding that the Petitioner did not qualify as "aggrieved" within the meaning of C.G.S. Sec. 4-183. (A-27).

In the appeal of this case to the Connecticut Appellate Court, only state law issues were initially presented by the Petitioner. After the appeal was filed, the Company, over the Petitioner's objection, again inserted the federal question. The Connecticut Supreme Court thereupon transferred the case to itself (A-79) and seemed anxious to deal with the constitutional issue. When the DPUC and OCC inadvertently failed to brief the question of preemption, the court ordered them to file supplemental briefs. (A-21).

The court below, in its decision, set aside the issues of state law, which had formed the basis of the Superior Court ruling, and addressed only the federal question. Relying on Sections 546(e)(1) and 555(a) of the Cable Act, (A-45 and 49), which provide for appeals by the cable operator, as well as the conflict preemption language of Section 556 (c), (A-51), the court below concluded that no appeal could be taken by any other party, including the OCC. (A-15 and 19). The court bolstered its opinion with reference to the unsupported assertion contained in the House Report (A-16).

b. *The doctrine of federal preemption.*

This Court and the U.S. Courts of Appeals have on numerous occasions defined the doctrine of federal preemption and delineated its various applications. In commencing its analysis in a land use case, the Tenth Circuit stated:

> Congress' power to preempt state and local law derives from the Supremacy Clause of the United States Constitution which provides 'the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' Art. VI, cl. 2. Preemption may occur in

> three situations: (1) express preemption, which occurs when the language of the federal statute reveals an express congressional intent to preempt state law ...; (2) field preemption, which occurs when the federal scheme of regulation is so pervasive that Congress must have intended to leave no room for a State to supplement it; and (3) conflict preemption, which occurs either when compliance with both the federal and state laws is a physical impossibility, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. ... Congressional intent is the touchstone of any preemption analysis. [Citations omitted.] *Mount Olivet Cemetery Ass'n v. Salt Lake City,* 164 F.3d 480, 487 (10th Cir. 1998).

> Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. *Perez v. Campbell,* 402 U.S. 637, 91 S.Ct. 1704, 1707, 29 L.Ed.2d 233 (1971).

There can be no question that the Cable Act "removes much of the power that the DPUC historically has had to regulate cable operators, and indicates a Congressional intent to create significant federal involvement in this area." *Housatonic Cable Vision v. Dept. of Public Utility*, 622 F. Supp. 798, 805 (D.C. Conn. 1985). Since the federal statute however expressly allows state regulation[2] and contains specific preemptive language[3], the federal issue is one of conflict preemption, rather than field preemption. If there were any question on this point, it would be quickly resolved by the following statement appearing at page 24 of the House Report:

> It is the Committee's intent that the franchise process take place at the lower level, where city officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs. House Report No. 98-934, p. 24.

In *Capital Cities Cable, Inc. v. Crisp,* 467 U.S. 691, 104 S.Ct. 2694, 2702, 81 L.Ed.2d 580 (1984), this Court characterized the cable television regulatory system that immediately preceded the adoption of the Cable Act as "a program of 'deliberately structured dualism' in which state and local authorities were given responsibility for granting franchises to cable operators within their communities and for overseeing ... local incidents of cable operations ..."

In construing the language of 47 U.S.C. Sec. 555(a), the court below may have subconsciously relied upon the doctrine of *expressio unius est exclusio alterius.* If so, its reliance was misplaced because the principle is inapplicable in a context where federal law is superimposed upon an existing framework of local regulation which the Cable Act chose not to disturb, but to utilize in the implementation of its stated goals.

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[2] 47 U.S.C. 521 (3) (A-33); 47 U.S.C. 531 (A-33); 47 U.S.C. 541 (a), (d) and (f) (A-35 and 37); 47 U.S.C. 546 (a) (A-43); 47 U.S.C. 552 (d) (A-47); and 47 U.S.C. 556 (a) and (b) (A-51).

[3] 47 U.S.C. 556 (c) (A-51).

c) *The Ashwander avoidance rule.*

Ashwander v. Tenn. Valley Authority, 297 U.S. 288, 56 S.Ct. 466, 80 L.Ed 688 (1936) involved a dispute between a federal agency and local electric power companies over the distribution of hydro-electric energy. Justice Brandeis, in his concurring opinion, reviewed the principles customarily applied by this Court in ruling upon constitutional questions (pp. 346 and 347).

> The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are: ...
> 2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' [Citations omitted.] 'It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' [Citation omitted.]
> 3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' [Citations omitted.]
> 4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory

> construction or general law, the Court will decide only the latter. [Citations omitted.] Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. [Citation omitted.]

He noted that the doctrine was founded upon the principle enunciated in the following passage from 1 Cooley, Constitutional Limitations (8th ed.), p. 332:

> It must be evident to anyone that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility.

The avoidance rule was recently invoked by the U.S. Court of Appeals for the Fourth Circuit in *Mediaone Group v. County of Henrico, Va.*, 257 F.3d 356 (4th Cir. 2001) and *Bell Atlantic Maryland v. Prince George's County*, 212 F. 3d 863 (4th Cir. 2000). Why should the Connecticut Supreme Court, in its construction of federal law, not be held to the same rigors as the federal courts?

If the court below had applied the avoidance principle and first addressed the state law questions, upon which the Superior Court's dismissal was based, it might never have reached the federal question. The court might have agreed with the reasoning of Judge Cohn and simply affirmed the lower court's decision. This would have resolved the dispute and eliminated the necessity of entering the precarious realm, to which Justice Brandeis alluded, in order to declare state laws unconstitutional. At the same time, proceeding in this fashion would clearly have fulfilled the salutary purpose of the avoidance rule and if, on the other hand, the Connecticut Supreme Court, after delving into the state law issues, had determined to overrule the state law determination of the Superior Court, it would have had license to enter the federal sanctuary.

II. SETTING ASIDE THE AVOIDANCE RULE, THE COURT BELOW FAILED TO APPLY RULES OF CONSTRUCTION CONSISTENT WITH THE HOLDINGS OF THIS COURT AND THE U.S. COURTS OF APPEALS.

a) The plain language of the statute is paramount.

In *United States v. American Trucking Ass'ns*, 310 U.S. 534, 60 S.Ct.1059, 84 L.Ed. 1345 (1940), this court was required to determine the power of the Interstate Commerce Commission to establish the qualifications of and regulate the hours of service of employees of motor carriers under the Motor Carrier Act of 1935. Prefacing its analysis, this Court stated (p. 1063):

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of

a statute, particularly in a law drawn to meet many needs of a major occupation.

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning.

Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion ... Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them. [Emphasis supplied.] *Caminetti v. United States*, 242 U.S. 470, 485-486, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1916). See also *Baum v. Madigan*, 979 F.2d 438, 441 (6th Cir. 1992).

In determining the scope of a statute, we first look to its language. If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.' [Emphasis supplied.] *United States v. Turkette,* 452 U.S. 576, 101 S.Ct. 2524, 2527, 69 L.Ed.2d 246 (1981); *Consumer Products Safety Com'n v. GTE Sylvania, Inc.*, 447 U.S. 102,

> 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980); *Bradley v. Austin*, 841 F.2d 1288, 1293 (6th Cir. 1988); *United States v. Premises Known as 8584 Old Brownsville Road, Shelby County, Tenn.*, 736 F.2d 1129, 1130 (6th Cir. 1984).
>
> Conversely, where the words employed in a statute are susceptible of several meanings, the court is at liberty to rely upon the legislative history and surrounding circumstances to determine the sense in which they were used. *Gellman v. United States*, 235 F.2d 87 (8th Cir. 1956). See also *Torti v. United States*, 249 F.2d 623 (7th Cir. 1957).

b. The doctrine of ambiguous silence.

The court below, in its decision, relied upon three sections of the Cable Act, 47 U.S.C. Sec. 546(e)(1), (A-45), 47 U.S.C. Sec. 555(a) (A-49) and 47 U.S.C. Sec. 556(c), (A-51). The first provides that "Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title." [Emphasis supplied.] Simply put, this section gives a cable operator a right of appeal on two grounds, the denial of his proposal for renewal and/or the franchising authority's failure to observe the procedural requirements of the act. The second provision (Sec. 555(a) (A-49)) expands the cable operator's right of appeal by including, as grounds for appeal, an adverse determination in a proceeding for the initial grant of a franchise or for the modification of a franchise. The third key provision referred by the court is Section 546(e)(1), (A-45), which expressly preempts any state law inconsistent with these provisions. It requires little knowledge of the English language and virtually no legal expertise to conclude that there is nothing ambiguous about these words. But the court nevertheless reasoned that because they "expressly identify only the incumbent cable operator as the party able to obtain judicial review ..., no other party may appeal ..." (A-15).

The drafters could easily have brought about this rather drastic result by simply saying so. But they obviously did not. The court, in effect, found ambiguity, not in the language used, but in legislative silence. Why did the drafters expressly grant cable operators such rights of appeal without saying anything about whether or not such rights were intended to pertain to other potential litigants? Could such silence have been motivated by Congressional disinterest? Could such silence have been motivated by the legislative desire to stimulate investment in and thus the growth of the cable industry by assuring cable operators of uniformity and fairness in the granting, modification and renewal of franchises, regardless of existence or nonexistence of appellate rights in other parties under state and local law?

In *AMSAT Cable v. Cablevision of Connecticut,* 6 F.3d 867 (2nd Cir. 1993), the Plaintiffs challenged the constitutionality of Connecticut's mandatory cable access law. Such legislation was not mentioned in the Cable Act. The Plaintiffs argued that because Congress had considered and subsequently abandoned the idea of including a cable access provision in the act, this gave rise to a presumption that it intended to preclude local regulatory authorities from enacting and enforcing similar provisions. Recognizing, instead, the impotence of silence, the court rejected the contention saying (at page 876) that the state law "neither conflicts with any provision of the Cable Act, nor falls within any of the statute's preemption provisions."

In the adoption of the Cable Act, Congress ventured headlong into a field which for years had been subject to a myriad of locally devised regulatory schemes administered nationwide by state governments, as well as a vast variety of political subdivisions. Its objective was to allocate regulatory responsibility between federal and local agencies and thus establish a uniform system that would encourage the development of the industry, while protecting the rights of both operators and subscribers. It's clear that, recognizing the divergent needs of local communities, Congress determined that it would have been foolhardy to attempt to take over the entire field. So instead, through the Cable Act, it created a dichotomy of federal and state jurisdiction and its failure to make any statement in Sections 546, (A-43) and 555(a), (A-49), about appeals by other parities simply indicates its reluctance to interfere with rights accorded by local law in areas left to local jurisdiction. Its silence was not inadvertent but deliberate, and thus not ambiguous.

c. ***Rules applicable to preemption analysis; presumption of validity.***

In its analysis of the preemption issue, the court below failed to apply the rules of construction sanctioned by this Court and the U.S. Courts of Appeals. There is no dispute that, when Congress adopted the Cable Act, Connecticut had already developed an effective system of cable regulation.[4] *Rice v. Santa Fe Elevator Corporation*, 331

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[4] See footnote 1.

U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947), involved the issue of preemption in a field traditionally occupied by state law.[5] Noting that the federal preemption claim was addressed to a state law in an area previously dominated by state legislation, the court stated (p. 1152):

> [W]e start with the assumption that the historic police powers of the State were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. [Emphasis supplied.]

This principle was reiterated and relied upon in *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963); *DeCanas v. Bica,* 424 U.S. 351, 96 S.Ct. 933, 937, 47 L.Ed.2d 43 (1976); *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S.Ct. 1305, 1309, 51 L.Ed.2d 604 (1977); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 98 S.Ct. 988, 994, 55 L.Ed.2d 179 (1978); *Maryland v. Louisiana,* 451 U.S. 725, 101 S.Ct. 2114, 2129, 68 L.Ed.2d 576 (1981); *California v. Arc America Corp.*, 490 U.S. 93, 109 S.Ct. 1661, 1665, 104 L.Ed.2d 86 (1989); *Mount Olivet Cemetery Ass'n v. Lake City Salt, supra* at 487; *Mobil Oil Corp. v. Tully*, 499 F.Supp. 888, 897 (N.D.N.Y. 1980); *Quest Broadband Services, Inc. v. City of Boulder,* 151 F.Supp.2d 1236, 1239 (D. Colo. 2001).

Nowhere in the Cable Act is there any suggestion that it was the intent of Congress to deprive any party of access to judicial review, especially with respect to questions of state law.

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[5] This is similar to the case at bar, as indicated in *Housatonic Cable Vision v. Dept. of Public Utility, supra* at 805.

> There is a 'strong presumption that the legislative purpose is expressed by the ordinary meaning of the words used' in a statute. ... [Citation omitted.] this presumption 'is rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed.' ... [Citation omitted] 'If the language is clear, the inquiry is over.' [Emphasis supplied.] *Keith v. Rizzuto,* 212 F.3d 1190, 1193 (10th Cir. 2000). See also *Cipollone v. Liggett Group, Inc,* 505 U.S. 504, 112 S.Ct. 2608, 2618, 120 L.Ed.2d 407 (1992) and *Union CATV, Inc. v. City of Srurgis, Ky.,* 107 F.3d 434, 439 (6th Cir. 1997).

In its analysis of the preemption issue, the court below failed even to mention this presumption, which, particularly in this context, must be conceded to be an indispensable tool of statutory interpretation. It should be noted that the appellate rights granted cable operators pursuant to 47 U.S.C. Sec. 555(a) (A-49), extend to both state and federal courts and for a period of 120 days after notice of the determination. This adds force to the contention that Congress sought to broaden and standardize the operator's rights to judicial review to assure the fairness promised in 47 U.S.C. Sec. 521(5), (A-33). There can be no question that with regard to the right of a cable operator in Connecticut to appeal an adverse determination of the DPUC, in a matter involving the granting, modification or renewal of a cable franchise, the provisions of C.G.S. Sec. 4-183 (A-52), insofar as they require the appeal to be taken to the Superior Court within 45 days after notice of the decision, would be preempted by 47 U.S.C. Sec. 555(a), (A-49).

d) Enforcement of consumer protection laws.

The Petitioner and the OCC are consumer protection agencies established by Connecticut law prior to the adoption of the Cable Act.[6] Two of the purposes expressly stated in 47 U.S.C. Sec. 521(2) and (4) are to "assure that cable systems are responsive to the needs and interests of the local community" and "that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." (A-33).

The court below determined that the Petitioner's appeal, even though it did not contest the renewal of the Company's franchise, was federally preempted. In addition, it declared C.G.S. Sec. 16-2a, (A-55), unconstitutional insofar as it purports to authorize the OCC to maintain such an appeal. (A-19).

47 U.S.C. Sec. 552(d) (9) provides that "Nothing in this subchapter shall be construed to prohibit any State or franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this subchapter." [Emphasis supplied.] (A-47). When the Petitioner relied upon C.G.S. Secs. 4-183 and 16-35, (A-52 and 58), as its authorization to appeal to

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[6] C.G.S. Sec. 16-331(c) expressly authorizes regulations for the establishment of Advisory Councils, designates them as intervenors in contested matters before the DPUC, requires cable operators to periodically meet with them and to provide them with copies of all documents filed with the DPUC and authorizes Advisory Councils to file complaints for the failure or refusal to furnish services. (A-60). C.G.S. Sec. 16-2a designates the OCC "to act as the advocate for consumer interests in all matters which may affect Connecticut consumers" and authorizes the OCC "to appear in and participate in any regulatory or judicial proceedings, federal or state, in which such interests of Connecticut consumers may be involved." (A-55).

the Superior Court from the decision of the DPUC, those statutes became "consumer protection laws" within the meaning of 47 U.S.C. Sec. 552(d) (A-47). And likewise, when the OCC relies upon those statutes coupled with C.G.S. Sec. 16-2a, (A-55), in an appeal to the Superior Court from an order of the DPUC entered in a franchise renewal proceeding, those enactments clearly assume the guise of "consumer protection laws" within the meaning of the federal statute.

The Petitioner in the case at bar did not contest the renewal of the franchise, but sought the enforcement of consumer protection laws. The Petitioner was concerned with the term of the renewed franchise, which is governed by C.G.S. Sec. 16-331(d)(1),[7] (A-61), and, on the basis of the Company's past performance, sought input in developing the terms and conditions to be included in the renewed franchise agreement, which would govern the Company's future conduct for more than a decade. Such involvement is expressly authorized by C.G.S. Sec. 16-331(d)(5),[8] (A-63). In addition to these consumer protection issues, the Petitioner was also concerned with a number community access matters which can easily fit into either category and are specifically addressed in the subsection that follows. All of these concerns, however they may be classified, fall squarely within the sphere of responsibility assigned to advisory councils under Connecticut statutes and regulations.

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[7] C.G.S. Sec. 16-331(d)(1), establishes the criteria for setting the term of the franchise. These include issues, such as the operator's past performance in meeting cable-related community needs, the operator's compliance with regulations and statutes, the effectiveness of the operator's management and in dealing with "consumer requests, complaints and billing questions or disputes," its effectiveness in dealing "with the advisory council," the "quality and diversity of the operator's" commercial and community access programming, "the quality of the operator's equipment and facilities," and its "proposals for future extensions and upgrading." (A-61).

[8] Under C.G.S. Sec. 16-331(d)(5), the DPUC is required "to consult with the advisory council ... before making a decision concerning the renewal of the certificate." (A-63).

e) Enforcement of community access regulations.

47 U.S.C. Sec. 521(2) states that one of the purposes of the Cable Act is to "assure that cable systems are responsive to the needs and interests of the local community." (A-33). This purpose is implemented by the provisions of 47 U.S.C. Sec. 531, which authorize local franchising agencies to designate channel capacity for public, educational and governmental use (community access programming), to include such designations in franchise agreements, to adopt rules and procedures for the use of such channels, and to enforce such franchise provisions and such rules and procedures. (A-33).

C.G.S. Sec. 16-331a(b) requires that a cable operator, "in consultation with the franchise's advisory council, shall provide facilities, equipment and technical and managerial support to enable the production of meaningful community access programming within its franchise area." This section also requires that each operator annually review its community access rules, regulations and policies and that such review include "consultation with the franchise's advisory council." (A-66).

C.G.S. Sec. 16-331a(d) requires each operator responsible for providing community access programming to "conduct outreach programs and promote its community access services." The statute goes on to enumerate six methods in which this can be accomplished. (A-67).

C.G.S. Sec. 16-331a(h) provides that at the advisory council's request "and for good cause shown, the department [DPUC] shall require an organization responsible for community access operations [in this case, the Company] to have an independent audit [of the community access budget] conducted" at its expense. (A-69).

C.G.S. Sec. 16-331a(k) provides that the DPUC shall annually "establish the amount that the ...organization responsible for community access operations [the Company] shall receive for such operations from subscribers." It further provides that this annual percapita rate can be increased or decreased within stated parameters after considering certain criteria, among which are the "recommendations of the advisory council." (A-70).

It has been previously noted that, during the renewal proceedings, the Petitioner, pursuant to the statutory provisions referred to above, raised a number of issues concerning the Company's compliance with these requirements. The Petitioner had requested the designation of additional community access channels and an increase in the annual subscriber contribution rate to be established under C.G.S. Sec. 16-331a(k). (A-70). The Petitioner introduced evidence tending to establish substantial community access budget discrepancies and requested an audit pursuant to C.G.S. Sec. 16-331a(h). (A-69). The Petitioner introduced evidence concerning the Company's failure to comply with the outreach requirements of C.G.S. Sec. 16-331a(d) and sought the inclusion of appropriate corrective measures in the renewed franchise agreement. (A-67). The Petitioner raised the issue of whether the rate to be established by the DPUC under C.G.S. Sec. 16-331a(k) was intended to cover only operating expenses, or capital expenditures, as well. (A-70). The Petitioner sought the implementation and the inclusion in the agreement of community access recommendations contained in the cable-related assessment of community needs compiled pursuant to C.G.S. Sec. 16-331(f), which was developed with its participation. (A-65). The Petitioner objected to the DPUC's ruling that it was illegal for non-profit community access providers to charge membership dues and sought the inclusion in the franchise agreement of a provision requiring the Company to include a fundraising check-off option in its billing. It sought enforcement of the Company's obligation to properly maintain community access equipment and facilities in its care and the inclusion of franchise provisions assuring an equitable distribution of limited community access resources.[9] All of these were responsibilities expressly delegated to the Petitioner and matters, which by the express language of the Cable Act, fell within the purview of state law. How could they possibly be construed as inconsistent with federal law pursuant to 47 U.S.C. Sec. 556(c) (A-51).

Provisions of the Cable Act have been held to be enforceable under both state and federal law. Thus in *Com. of Ky., Ex Rel. Gorman v. Comcast Cable,* 881 F.Supp. 285 (W. D. Ky. 1995), it was held that the prohibition against negative option billing in the 1992 amendment to the Cable Act could be enforced either under federal law or the state's unfair trade practices act. This follows the rule articulated in *Housatonic Cable Vision v. Dept. of Public Utility, supra* at 806, that if state regulations "are not expressly prohibited and can coexist with the Cable Act, they remain in effect despite the federal statute." See also *DeCanas v. Bica, supra,* (holding that state and federal immigration regulations can harmoniously coexist) and *Florida Lime & Avocado Growers, Inc. v. Paul, supra,* (upholdind the efficacy of state and federal regulations pertaining to interstate marketing). Accordingly, can there be any serious doubt that, if the constitutionality of such consumer protection and community access regulations were challenged in any proceeding other than one involving the granting, modification or renewal of a cable franchise, no court would have held them to be federally preempted? So, if the enactments themselves are constitutionally valid, how can their enforcement be barred? Can their enforcement be preempted solely because the issue is raised in a franchise renewal proceeding?

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[9] This is a six-town franchise and there was a history of complaints that disproportionate budget resources were being allocated to certain of the towns.

The decision of the court below, raises more questions than it answers. If judicial review of the orders and decisions of the regulatory authority (the DPUC) in cable matters is reserved only to cable operators, does this not constitute a denial of equal protection guaranteed by the Fourteenth Amendment? Can such collateral issues be appealed by other parties in proceedings which are independent of the process of granting, modifying or renewing cable franchises? If so, doesn't this lead to a multiplicity of litigation? If they are not reviewable in any context, does this not directly frustrate the expressed purposes of the federal law?

Even if it were conceded, *arguendo,* that an appeal which directly contests the renewal of a franchise is preemptively barred, what basis is there for condemning an appeal which, though it proceeds from the same administrative action, simply focuses on collateral issues, such as provisions to be included in the franchise agreement and enforcement of state regulations not inconsistent with federal law? In this context, how can it be said that "compliance with both federal and state regulations is a physical impossibility?" *Maryland v. Louisiana, supra* at 2129; *Florida Lime & Avocado Growers, Inc. v. Paul, supra* at 1217. Can it be said that access to judicial review, under these circumstances, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress?" *Maryland v. Louisiana, id.* And surely, without access to judicial review, "enforcement" is little more than an illusion.

The decision of the court below presents the anomaly of summarily depriving cable subscribers, not only in Connecticut but nationwide, of the right to compel enforcement of the very regulations that were specifically designed for their protection.

It could be argued that such limited appeals might lead to instability in the cable industry. This should not give rise to concern, however, because the Cable Act, unlike the attitude taken by the court below with respect to the appellate rights of subscribers, elevates the rights of the operators by presenting numerous hurdles which must be vaulted before a denial or adverse decision can even be considered by the franchising authority. It suffices to say that, in the protections accorded cable operators, the federal law is replete with redundancy.

CONCLUSION

The constitutional issue decided by the court below impacts a vital national industry. It has never been addressed by this Court, or by any federal court. There can be no doubt that, if it is allowed to stand, it will leave an indelible mark on the future development and direction of cable services. While gratuitously enhancing the position of operators, it deals a devastating blow to consumerism and exponentially boosts the power of franchising agencies. Under this decision, their authority becomes completely unfettered. Finally, it throws a disruptive monkey wrench into the gears of an intricate system which, though slanted in the operator's favor, was nonetheless tediously devised to strike a delicate balance. A pronouncement of such gravity and with the potential of such deleterious consequences demands the attention of this Court.

On the basis of the foregoing arguments and authorities, the Petitioner urges this Court to consider this issue.

Respectfully submitted,
Petitioner

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No. ________

In The
Supreme Court Of The United States

October Term, 2001

◆

COX CABLE ADVISORY COUNCIL
Petitioner,

v.

DEPARTMENT OF PUBLIC UTILITY
CONTROL, COXCOM CONNECTICUT, INC.,
AND THE OFFICE OF CONSUMER COUNSEL
Respondents.

◆

PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

◆

APPENDIX

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COX CABLE ADVISORY COUNCIL *v.* DEPARTMENT OF PUBLIC UTILITY CONTROL ET AL.
(SC 16538)

Sullivan, C. J., and Borden, Katz, Vertefeuille and Zarella, Js.

Syllabus

The plaintiff cable advisory council, which had been established pursuant to certain state regulations (§ 16-333-24 et seq.), appealed to the trial court from a decision by the defendant department of public utility control granting to the defendant cable company, C Co., a renewal of its franchise. The plaintiff had been permitted to intervene in the administrative proceedings pursuant to the applicable state statute (§ 16-331 [c] [2]), and it filed its appeal pursuant to the provisions of the Uniform Administrative Procedure Act (§ 4-166 et seq.). C Co. moved to dismiss the appeal, claiming that the plaintiff had failed to allege aggrievement and, therefore, that the trial court lacked subject matter jurisdiction. C Co. also claimed that the trial court lacked jurisdiction because the plaintiff was preempted by federal law from bringing its appeal. The plaintiff subsequently amended its appeal to allege facts addressing the issue of aggrievement. The trial court, addressing only the original appeal after it ruled that the plaintiff's amended appeal had been filed beyond the statutory (§ 4-183 [c]) appeal period, determined that the plaintiff had failed to allege facts showing aggrievement and it rendered judgment dismissing the appeal, from which the plaintiff appealed. *Held* that because the federal Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.) (Cable Act) identifies only an incumbent cable company as having the right to judicial review of the renewal of a cable franchise, because that act allows appeals in only three instances, none of which expressly pertained to the plaintiff here, and because that law preempts any inconsistent state law, the trial court's dismissal of the action, albeit on different grounds, was proper; the Cable Act expressly gives the right to appeal to "any cable operator," the legislative history supports a limited reading of the act to prohibit any other party from appealing, and Congress clearly intended to limit the parties and circumstances under which review may be sought.

Doctrine of federal preemption, discussed.

Argued September 13, 2001—officially released January 15, 2002

Procedural History

Appeal from a decision of the named defendant granting the defendant CoxCom Connecticut, Inc.'s application for renewal of its statewide cable television franchise, brought to the Superior Court in the judicial district of New Britain, where the court, *Cohn, J.*, granted the motions to dismiss filed by the named defendant and the defendant CoxCom Connecticut, Inc., and rendered judgment thereon dismissing the appeal, from which the plaintiff appealed. *Affirmed.*

Edward G. Pizzella, for the appellant (plaintiff).

Robert L. Marconi, assistant attorney general, for the appellee (named defendant).

Burton B. Cohen, with whom, on the brief, was *Sharon L. Codeanne*, for the appellee (defendant CoxCom Connecticut, Inc.).

Phyllis J. Trowbridge, with whom, on the brief, were *Guy R. Mazza* and *Melissa Day*, for the appellee (defendant office of consumer counsel).

Opinion

KATZ, J. The dispositive issue in this appeal is whether the plaintiff, the Cox Cable Advisory Council (advisory council), may appeal from the decision of the defendant franchising authority, the department of public utility control (department), granting to the defendant CoxCom Connecticut, Inc., doing business as Cox Communications Connecticut/Manchester (Cox Cable), a renewal of its franchise. The advisory council appeals from the judgment of the trial court dismissing its appeal from the department's decision to renew Cox Cable's franchise.[1] We determine that federal law preempts parties other than the cable operator from appealing the renewal of a cable franchise and that, accordingly, the trial court's dismissal of the action, albeit on different grounds, was proper.

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[1] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

The record contains the following undisputed facts relevant to this appeal. On April 7, 1998, Cox Cable filed with the department[2] an application, pursuant to General Statutes §§ 16-331 and 16-333, and § 16-333-38 of the Regulations of Connecticut State Agencies, for renewal of its authorization to construct and operate a community antenna television system, pursuant to a franchise or certificate of public convenience and necessity, for the franchise area consisting of the towns of Glastonbury, Manchester, Newington, Rocky Hill, South Windsor and Wethersfield. In accordance with the detailed procedural road map set forth by the Cable Communications Policy Act of 1984 (Cable Act); 47 U.S.C. § 521 et seq.; and under Connecticut's implementation of this process; see Regs., Conn. State Agencies §§ 16-333-38 (a), 16-333-40 (b); Cox Cable submitted the requisite information to the department. Thereafter, in accordance with General Statutes § 16-331 (d) (5), and §§ 16-333-38 (b) and 16-333-40 of the regulations, the department held a hearing at which it designated Cox Cable and the office of consumer counsel[3] as parties to the proceeding. Additionally, the department designated the advisory council, established pursuant to § 16-333-24 et seq. of the Regulations of Connecticut State Agencies[4] as the council to provide advice to the subject franchise area serviced by Cox Cable, as an intervenor pursuant to § 16-331 (c) (2). Following his request, the mayor of the town of Wethersfield was also granted intervenor status in the administrative proceedings.

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[2] The department is the state agency designated as the franchising authority to grant and renew cable television franchises in Connecticut. See 47 U.S.C. § 522 (10) and General Statutes § 16-331 (a).

[3] The office of consumer counsel's responsibility emanates from General Statutes § 16-2a (a), which provides: "There shall continue to be an independent Office of Consumer Counsel, within the Department of Public Utility Control for administrative purposes only, to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies, electric suppliers and certified telecommunications providers. The Office of Consumer Counsel is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which such interests of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in this state may be involved. The Office of Consumer Counsel shall be a party to each contested case before the Department of Public Utility Control and shall participate in such proceedings to the extent it deems necessary.

Pursuant to § 16-331 (f), the department ordered a community needs assessment, the results of which were provided to the parties as well as the intervenors. Thereafter, Cox Cable submitted its proposal for renewal, which the department considered at several public hearings at which all the parties and the intervenors were afforded the opportunity to present evidence. A draft decision was issued, and the parties and the intervenors were afforded the opportunity to object. Specifically, the department invited all participants to file written exceptions to the draft decision and to notify the department of their intentions to present oral argument regarding the draft decision at a subsequent public hearing. After written objections were filed and oral arguments were presented, the department, on December 22, 1999, issued its final decision offering to renew Cox

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Said Office of Consumer Counsel may appeal from a decision, order or authorization in any such state regulatory proceeding notwithstanding its failure to appear or participate in said proceeding."

Although § 16-2a (a) was amended after the administrative proceedings in this case were initiated; see Public Acts 1998, No. 98-28, and Public Acts 1999, No. 99-286; the changes were minor and technical in nature and not relevant to this appeal. For purposes of clarity, references herein to § 16-2a (a) are to the current revision.

[4] Section 16-333-24 of the Regulations of Connecticut State Agencies provides: "Establishment of cable television advisory council

"There shall be established a cable television advisory council, hereinafter referred to as advisory council, consisting of representatives of the towns in each area where the Public Utilities Commission has granted a certificate of public convenience and necessity to a cable television company as franchise holder under authority of Chapter 289 of the General Statutes."

Cable's franchise, subject to various terms and conditions. Following Cox Cable's submission of a revised proposal for renewal that conformed with the department's decision, Cox Cable and the department executed a final revised franchise agreement.

The advisory council appealed from the decision to the Superior Court, contending that it was aggrieved by the department's decision renewing Cox Cable's franchise because the decision violated the Uniform Administrative Procedures Act (UAPA).[5] Cox Cable moved to dismiss the appeal, claiming that, because the question of aggrievement is essentially one of standing and thereby implicates the court's subject matter jurisdiction, the advisory council's failure to allege aggrievement deprived the trial court of jurisdiction to hear the appeal. *Quarry Knoll II Corp.* v. *Planning & Zoning Commission*, 256 Conn. 674, 701, 780 A.2d 1 (2001) (noting basic principle of law that plaintiff must have standing for court to have jurisdiction). Cox Cable further claimed that the trial court lacked jurisdiction because the advisory council was preempted under federal law from bringing its appeal. Thereafter, the advisory council filed an amended appeal alleging additional facts in order to address the issue of aggrievement. The department then filed its own motion to dismiss based on the advisory council's failure to establish aggrievement, and the court considered both motions together.

In reliance on *Simko* v. *Zoning Board of Appeals*, 205 Conn. 413, 533 A.2d 879 (1987), aff'd, 206 Conn. 374, 538 A.2d 202 (1988), the trial court determined that the amended appeal properly could not be considered by the court because the amendment had been filed after expiration of the forty-five day appeal period set forth in General Statutes § 4-183 (c).[6] The trial court thereafter focused on the original appeal and concluded that the advisory council's failure to allege facts showing aggrievement warranted dismissal of the appeal. Specifically, the court noted that the mere allegation by the advisory council that a section of the UAPA had not been followed was, in and of itself, insufficient to establish aggrievement. The trial court also noted that the reference in the amended appeal to the fact that the advisory council performs "functions customarily delegated to such councils by the statutes and regulations of the state of Connecticut" would not satisfy the jurisdictional requirement. Accordingly, the trial court dismissed the advisory council's appeal without addressing Cox Cable's jurisdictional challenge based on federal preemption.[7] This appeal followed.

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[5] See General Statutes § 4-166 et seq.

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[6] General Statutes § 4-183 (c) provides in relevant part: "Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office . . . ."

[7] The office of consumer counsel also appealed from the department's decision approving the renewal of the franchise agreement, and Cox Cable moved to dismiss that appeal, claiming that: (1) the appeal is preempted by 47 U.S.C. §§ 546, 555; (2) the office of consumer counsel is not aggrieved by the decision extending its franchise; and (3) the office of consumer counsel is collaterally estopped from contesting the methodology of the department because of its prior failures in other cases to object to the department's approach. The trial court rejected Cox Cable's preemption argument, concluding that, because "the [office of consumer counsel] was established as an independent agency in 1975, nine years before the federal Cable Communications Policy Act . . . [it] has a clear place in the regulatory scheme for the approval and renewal of cable franchises." The court also rejected Cox Cable's other arguments regarding the office of consumer counsel, thereby allowing the office of consumer counsel's appeal to proceed to trial.

Although that appeal did proceed to trial, the trial court ultimately dismissed it based upon its determination that, under the facts of the case, the issue that the office of consumer counsel wanted the court to resolve was not at controversy. No appeal was filed by the office of consumer counsel from that judgment of dismissal.

The advisory council makes three claims: (1) the present action is not preempted by the Cable Act; (2) the original appeal alleged sufficient facts to establish aggrievement; and (3) the amended appeal cured any deficiencies in the original appeal and should have been considered by the court. Cox Cable both defends the trial court's decision on the issue of aggrievement and offers federal preemption as an alternate ground for affirmance.[8] We agree with Cox Cable that federal law preempts parties other than the cable operator from appealing the renewal of a cable franchise and that, accordingly, the trial court's dismissal of the action, albeit on different grounds, was proper.

Our resolution of the dispositive issue in this appeal, that is, whether the state trial court was divested of subject matter jurisdiction to entertain the action by the advisory council, a third party to the underlying franchise renewal application, is guided by the doctrine of federal preemption as disclosed by the application of the appropriate canons of statutory construction.

"The question of preemption is one of federal law, arising under the supremacy clause of the United States constitution. . . . Determining whether Congress has exercised its power to preempt state law is a question of legislative intent. . . . [A]bsent an explicit statement that Congress intends to preempt state law, courts should infer such intent where Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law . . . or where the state law at issue conflicts with federal law, either because it is impossible to comply with both . . . or because the state law stands as an obstacle to the accomplishment and execution of congressional objectives . . . . *Dowling* v. *Slotnik*, 244 Conn. 781, 791, 712 A.2d 396, cert. denied sub nom. *Slotnik* v. *Considine*, 525 U.S. 1017, 119 S. Ct. 542, 142 L. Ed. 2d 451 (1998)." (Internal quotation marks omitted.) *Barbieri* v. *United Technologies Corp.*, 255 Conn. 708, 717, 771 A.2d 915 (2001).

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[8] Following oral argument before this court, the department and the office of consumer counsel, a party to this appeal pursuant to General Statutes § 16-2a (a); see footnote 3 of this opinion; were ordered to file supplemental briefs on the following issue: "Whether the [advisory council's] action is preempted by the Federal Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.)."

Our resolution of this case is also guided by our statutory construction jurisprudence. "The process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case . . . . In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . *Luce* v. *United Technologies Corp.*, 247 Conn. 126, 133, 717 A.2d 747 (1998). In construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended. *Kron* v. *Thelen*, 178 Conn. 189, 192, 423 A.2d 857 (1979); accord *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 26, 717 A.2d 77 (1998). Finally, because the question presented [in] this appeal involves an issue of statutory construction, our review is plenary. E.g., *Coley* v. *Camden Associates, Inc.*, 243 Conn. 311, 318, 702 A.2d 1180 (1997)." (Internal quotation marks omitted.) *Schreck* v. *Stamford*, 250 Conn. 592, 596–97, 737 A.2d 916 (1999); accord *Connelly* v. *Commissioner of Correction*, 258 Conn. 374, 403, 780 A.2d 890 (2001).

Against this background, we begin with a brief history of the pertinent provisions of the governing legislation along with a discussion of the relative roles played by the governing authorities. We begin with the Cable Act, which amended the federal Communications Act of 1934, the purpose of which was to provide a federal framework that would encourage investment in cable television systems and technology on a national level. See 47 U.S.C. § 521.[9] The Cable Act was enacted in order to "provide and delineate within Federal legislation the authority of Federal, state and local governments to regulate cable systems." (Internal quotation marks omitted.) *Cable Television Assn. of New York, Inc.* v. *Finneran*, 954 F.2d 91, 97 (2d Cir. 1992). Particularly relevant to this appeal is the purpose behind the provision addressing franchise renewals, which is intended to "establish an orderly process for franchise renewal which *protects cable operators* against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter . . . ." (Emphasis added.) 47 U.S.C. § 521 (5). To implement these goals, the Cable Act sets forth a detailed scheme for renewal of cable franchises. See 47 U.S.C. § 546.[10] Federal law

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[9] Title 47 of the United States Code, § 521, provides: "The purposes of this subchapter are to—

"(1) establish a national policy concerning cable communications;

"(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

"(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

"(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

"(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewals where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

"(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems."

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[10] Title 47 of the United States Code, § 546, provides: "Renewal

"(a) Commencement of proceedings; public notice and participation

"(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

"(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) of this section unless—

"(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

"(B) such a proceeding is commenced by the franchising authority on its own initiative.

"(b) Submission of renewal proposals; contents; time

"(1) Upon completion of a proceeding under subsection (a), a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

"(2) Subject to section 624 [47 USCS § 544], any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

"(3) The franchising authority may establish a date by which such proposal shall be submitted.

"(c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision

"(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b), the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether—

"(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

"(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, both sets forth the terms and conditions with which a

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has been reasonable in light of community needs;

"(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

"(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

"(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection [a]), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

"(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

"(d) Basis for denial

"Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c) (1), pursuant to the record of the proceeding under subsection (c). A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c) (1) (A) or on events considered under subsection (c) (a) (B) in any case in which a violation of the franchise or the events considered under subsection (c) (1) (B) occur after the effective date of this title unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

"(e) Judicial review; grounds for relief

"(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title.

"(2) The court shall grant appropriate relief if the court finds that—

"(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or renewed franchise must comply; see, e.g., 47 U.S.C. § 552; as well as prohibits the conditioning of a renewed franchise upon other terms and conditions. See 47 U.S.C. § 541 (b) (3) (D). In 1985, in order to conform with federal law, General Statutes § 16-331 was amended to provide for renewals consistent with the Cable Act; Public Acts 1985, No. 85-509, § 6; and, in the present case, pursuant to § 16-331 (d) (5),[11] the depart-

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"(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c) (1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

"(f) Finality of administrative decision

"Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

"(g) 'Franchise expiration' defined

"For purposes of this section the term 'franchise expiration' means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on [the date of the enactment of this title] Oct. 30, 1984.

"(h) Alternative renewal procedures

"Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

"(i) Effect of renewal procedures upon action to revoke franchise for cause

"Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section."

[11] General Statutes § 16-331 (d) (5) provides: "The department shall adopt regulations in accordance with chapter 54, establishing procedures and standards for the renewal of certificates issued to community antenna television companies. Such regulations shall, without limitation, (A) incorporate the provisions of the Communications Act of 1934, 47 USC 546, (B) require

ment promulgated specific regulations pertaining to cable television franchise renewals. See Regs., Conn. State Agencies § 16-333-38.[12]

For the purposes of the present case, there are three key federal provisions. The first is 47 U.S.C. § 546, specifically, subsection (e) (1), which sets forth the express

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the department to consult with the advisory council for the franchise area served by the certificate holder before making a decision concerning the renewal of the certificate, (C) require any holder of a certificate which is not renewed by the department to continue to operate the franchise for one year after the end of its term or until a successor is chosen and ready to assume control of the franchise, whichever is sooner, (D) establish standards for the content of notices sent to cable subscribers concerning public hearings for franchise renewal proceedings which standards shall include, without limitation, the requirements specified in subdivision (6) of this subsection, (E) establish standards to ensure that the costs and expenses of a municipality constructing, purchasing or operating a community antenna television company are accurately attributed to such company, and (F) establish quality standards for the instructional and educational channels. The department shall adopt regulations pursuant to this subdivision in conjunction with the Commission for Educational Technology."

A minor technical change that is not relevant to this appeal was made to § 16-331 (d) (5) by Public Acts 2000, No. 00-187. For purposes of clarity, we refer herein to the current revision of the statute.

[12] Section 16-333-38 of the Regulations of Connecticut State Agencies provides: "Informal renewals

"(a) A franchise holder may submit an application to the Public Utilities Control Authority for approval of a proposal for the renewal, extension, or transfer of a certificate, pursuant to Connecticut General Statutes section 16-331, at any time. A proposal for renewal, extension or transfer of a certificate submitted under this section of the regulations shall not be complete unless it contains information as required by section 16-333-40 (b) of these regulations. Such information shall be provided either in the statement of application or as exhibits annexed thereto and accompanying the application.

"(b) Upon submission of the proposal for renewal, extension or transfer of a certificate by a franchise holder pursuant to this section of the regulations, the department may, after holding a public hearing and consulting with the Advisory Council, grant or deny such proposal at any time, including after proceedings pursuant to section 16-333-39 of these regulations have commenced.

"(c) The denial of a renewal, extension, or transfer of a certificate proposal submitted under this section shall not affect action on any proposal that is submitted in accordance with section 16-333-39 of these regulations."

provision for judicial review: "*Any cable operator* whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title." (Emphasis added.) See footnote 10 of this opinion. The second provision is 47 U.S.C. § 555 (a),[13] which provides in part, with regard to an action to review determinations by franchising authorities: "*Any cable operator* adversely affected by any final determination made by a franchising authority under section 541 (a) (1), 545 or 546 of this title may commence an action within 120 days after receiving notice of such determination . . . in [either] (1) the district court of the United States for any judicial district in which the cable system is located; or (2) in any State court of general jurisdiction having jurisdiction over the parties." (Emphasis added.) Because these provisions expressly identify only the incumbent cable operator as the party able to obtain judicial review of a decision of a franchising authority, we conclude that, in light of the third key provision, 47 U.S.C. § 556 (c),[14] which provides in part that "any provision of law of any State . . . which is inconsistent with this chapter shall be deemed preempted and superseded," no other party may appeal such a decision.

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[13] Title 47 of the United States Code, § 555, provides: "Judicial proceedings

"(a) Actions to review determinations by franchising authorities.

"Any cable operator adversely affected by any final determination made by a franchising authority under section 541 (a) (1), 545 or 546 of this title may commence an action within 120 days after receiving notice of such determination, which may be brought in—

"(1) the district court of the United States for any judicial district in which the cable system is located; or

"(2) in any State court of general jurisdiction having jurisdiction over the parties.

"(b) Available relief

"The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) and with the provisions of subsection (a) of this section.

"(c) Review of constitutionality of sections 534 and 535

"(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 534 or 535 of this title or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 534 or 535 of this title or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

Our determination rests, however, on more than that delineation. We note that the provisions related to a renewal franchise, in specific, 47 U.S.C. § 546 (e) (1) and (2) and 47 U.S.C. § 555, allow for judicial review of a decision or action in a franchise renewal in only three instances, *none* of which expressly pertains to the advisory council. A cable operator may appeal a decision when (1) it has been affected adversely by a franchising authority's failure to comply with the procedural requirements of 47 U.S.C. § 546, (2) when its proposal for renewal has been denied, or (3) when its proposal has been granted subject to specified conditions that the operator refuses to accept.

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[14] Title 47 of the United States Code, § 556, provides: "Coordination of Federal, State, and local authority

"(a) Regulation by States, political subdivisions, State and local agencies, and franchising authorities

"Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter.

"(b) State jurisdiction with regard to cable services

"Nothing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.

"(c) Preemption

"Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.

"(d) 'State' defined

"For purposes of this section, the term 'State' has the meaning given such term in section 153 (v) of this title."

Although those provisions do not expressly prohibit any other party from appealing the department's decision, the legislative history supports this limited reading of the Cable Act. A report prepared by the House Committee on Energy and Commerce provides: "A cable operator adversely affected by a franchising authority's failure to comply at any time with the procedural requirements of this section or whose proposal for renewal is denied may appeal to state court or to the U.S. District Court under the provisions of section 636. If a franchising authority grants renewal but subject to specified conditions which the operator refuses to accept, the operator may appeal that decision as if it were a denial." House Committee on Energy and Commerce, Cable Franchise Policy and Communications Act of 1984, H.R. Rep. No. 98-934, p. 75 (1984) (House Report); see *Cable Investments, Inc.* v. *Woolley*, 867 F.2d 151, 155 (3d Cir. 1989) (referring to House Report as "the principal source of legislative history on the Cable Act"). More important, for purposes of this appeal, the House Report expressly explains that where the "incumbent [cable operator] is granted renewal pursuant to his proposal, there is *no right of appeal by any other party*."[15] (Emphasis added.) H.R. Rep. No. 98-934, p. 75.

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[15] We recognize that "the House Report was written before the Senate amended the renewal provision to require public participation in the renewal process." M. Myerson, "The Cable Communications Policy Act of 1984: A Balancing Act on the Coaxial Wires," 19 Ga. L. Rev. 543, 583–84 (1985). We read the mandate on the part of the department to consult with the advisory council for the franchise area served by the certificate holder before making a decision concerning the renewal of the certificate, as set forth in § 16-331 (d) (5) (B), not as an expansion of who may appeal, but, rather, as a delineation of a ground upon which to appeal.

Furthermore, we note that when Congress has intended to provide rights to third parties, it specifically has done so. Compare 47 U.S.C. § 546 with 47 U.S.C. § 532 (d) (person aggrieved by cable operator's refusal to make channel capacity available may sue in federal court), 47 U.S.C. § 553 (any person harmed by unauthorized interception of cable service may bring civil action), and 47 U.S.C. § 551 (subscriber has private right of action for violation of privacy). "Congress for reasons of its own decided upon the method for the protection of the 'right' which it created. It selected the precise machinery and fashioned the tool which it deemed suited to that end. . . . In such a case the specification of one remedy normally excludes another." (Citation omitted.) *Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297, 301, 64 S. Ct. 95, 88 L. Ed. 61 (1943); see *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 572, 99 S. Ct. 2479, 61 L. Ed. 2d 82 (1979) (express availability of certain private actions establishes that, "when Congress wished to provide a private damages remedy, it knew how to do so and did so expressly").

In view of Congress' clear intent to limit the parties and circumstances under which review may be sought, we are hard pressed to conclude that there is otherwise an inherent right to appeal the terms and conditions of a franchise renewal in contravention of the intent to the contrary. Indeed, preemption jurisprudence forbids such a conclusion *Cable Television Assn. of New York, Inc.* v. *Finneran*, supra, 954 F.2d 98; see *Westmarc Communications, Inc.* v. *Dept. of Public Utility Control*, United States District Court, Docket No. CVH89-631, 1990 U.S. Dist. LEXIS 20080 (D. Conn. May 4, 1990) (attempt to prohibit cable operators from factoring into basic service rates civil penalty imposed by department preempted by provisions prohibiting regulation of cable systems as utilities); *Time Warner Entertainment Co.*

v. *Briggs*, United States District Court, Docket No. CV92-40117-GN, 1993 U.S. Dist. LEXIS 1196 (E.D. Mass. January 14, 1993) (town bylaws requiring appointment of arbitrator when cable operator and local franchising authority are unable to agree on amendment provisions to franchise preempted by 47 U.S.C. §§ 545 [b] and 555 permitting operator to seek judicial review when request for modification of franchise has been denied); *MediaOne Group, Inc.* v. *Henrico*, 97 F. Sup. 2d 712, 713 (E.D. Va. 2000), aff'd, 257 F.3d 356 (4th Cir. 2001) (requirement for franchise renewal that cable operator provide its cable modem platform facility to any internet service provider preempted by 47 U.S.C. § 541 [C] [3] [D], which prohibits local franchising authority from requiring cable operators to provide telecommunication facilities as condition of franchise renewal).

The advisory council suggests that a determination by this court that it is preempted from pursuing this appeal "would be tantamount to a holding that the [s]tate of Connecticut and the [d]epartment, its designated regulatory authority, are powerless to establish the procedures for cable franchise renewal." We first note that nothing in this opinion undermines the legitimate reliance on the department as the state agency authorized to regulate and supervise cable operators requesting renewal of their franchises to hold hearings on the relevant issues and to make determinations regarding whether the operator is qualified to have its franchise renewed. Moreover, it is the right of the advisory council to appeal the renewal that is at issue in this case, not the authority of the department. Because the advisory council has no regulatory authority over Cox Cable,[16] our determination that it is preempted from appealing the department's decision regarding Cox Cable's franchise renewal has *no* impact on the congressionally mandated regime of local authority over the cable franchising process.

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[16] Indeed, the advisory council is a group of volunteers chosen to advise the management of Cox Cable on matters affecting the public, file reports on an annual basis to the department; Regs., Conn. State Agencies § 16-333-30; intervene in contested cases before the department involving the franchises the council advises, and file petitions with the department on behalf of any customer being denied service. General Statutes §§ 16-331a

Underlying the advisory council's argument is, essentially, the view that its role is tantamount to a second office of consumer counsel, with the power to enforce its advice against the department and local franchises, despite any such grant of authority from the legislature. We disagree with the advisory council's characterization of its role. The advisory council's argument, however, does implicate the question of whether the office of consumer counsel may appeal a franchise renewal by the department. That question, although not directly raised in this appeal; see footnote 7 of this opinion; is part of the dispositive issue before this court, that is, whether Cox Cable is the only party able to seek judicial review in this case. On the basis of the legislative intent expressed in 47 U.S.C. §§ 546 and 555, we conclude that General Statutes § 16-2a—the provision of state law that otherwise permits the office of consumer counsel to obtain judicial review—is inconsistent with the scheme set forth in the Cable Act and, therefore, is expressly preempted. See 47 U.S.C. § 556 (c).

We recognize that the office of consumer counsel is designated as "the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies . . . ." General Statutes § 16-2a (a). Additionally, we appreciate that, whereas there is no statute giving the advisory council the authority to appeal a decision by the department, § 16-2a generally empowers the office of consumer counsel to appeal department decisions to the court. See footnote 3 of this opinion. Such state legisla-

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(h) and 16-331 (c) (1). There is no statutory authority to enforce any of the advisory council's concerns.

tion cannot, however, control because, for the reasons we have already articulated, it conflicts with the clear federal legislative intent to restrict the right to seek review to the cable operator. *Barbieri* v. *United Technologies Corp.*, supra, 255 Conn. 717.

The judgment is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT

Francis J. Drumm, Jr. SUPREME COURT 231 Capitol Avenue
Chief Clerk APPELLATE COURT Drawer Z, Station A
860-757-2200 Hartford, CT 06106

September 20, 2001

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Re: SC 16538 Cox Cable Advisory Council v. Department of Public Utility Control et al.

Dear Counsel:

The Court's order of September 14 has been revised. The Court has ordered, sua sponte, that the Department of Public Utility Control and the Office of Consumer Counsel file supplemental briefs on the following issue: Whether the plaintiff's action is preempted by the Federal Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.).

The supplemental briefs, limited to ten pages, shall be filed on or before October 4, 2001.

Very truly yours,

Francis J. Drumm, Jr.

cc: Edward G. Pizzella; Murtha Cullina, LLP

SUPREME COURT
STATE OF CONNECTICUT

NO. SC 16538

COX CABLE ADVISORY COUNCIL

V.

DEPARTMENT OF PUBLIC UTILITY
CONTROL ET AL. : FEBRUARY 26, 2002

ORDER

THE MOTION OF THE DEFENDANT STATE OF CONNECTICUT OFFICE OF CONSUMER COUNSEL, FILED JANUARY 25, 2002, FOR RECONSIDERATION EN BANC PURSUANT TO PRACTICE BOOK §71-5, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED.**

BY THE COURT,

CHIEF CLERK

NOTICE SENT: FEBRUARY 26, 2002
PIZZELLA & PIZZELLA
ROBERT L. MARCONI, ASSISTANT ATTORNEY GENERAL
OFFICE OF CONSUMER COUNSEL
MURTHA CULLINA, LLP
CLERK, NEW BRITAIN J.D. (CV00-0500103)
HON. HENRY S. COHN
RJD 265/011270

NO. CV 00 0500103S : SUPERIOR COURT

COX CABLE ADVISORY : JUDICIAL DISTRICT OF
COUNCIL : NEW BRITAIN

V. :

DEPARTMENT OF PUBLIC: NOVEMBER 17, 2000
UTILITY CONTROL

NO. CV 00 0500104S : SUPERIOR COURT

OFFICE OF CONSUMER : JUDICIAL DISTRICT OF
COUNSEL : NEW BRITAIN

V.

DEPARTMENT OF PUBLIC: NOVEMBER 17, 2000
UTILITY CONTROL, ET AL.

RULING ON MOTIONS TO DISMISS

These are consolidated administrative appeals. The first case is brought by Cox Cable Advisory Council ("Council") and the second case is brought by the Office of Consumer Counsel ("OCC") against the Department of Public Utility Control ("DPUC") and Cox Cable, Inc. ("Cox"). Cox has moved to dismiss both cases and the DPUC has moved to dismiss Cox Cable Advisory Council v. DPUC, Docket No. CV 00 0500103, on jurisdictional grounds.

On April 7, 1998, Cox filed an application with the DPUC to renew its cable television franchise for the Manchester and surrounding towns. The OCC and the Council became parties to this renewal proceeding. On December 22, 1999, after hearings and a draft decision, the

DPUC issued its final decision approving renewal of the franchise. On February 4, 2000, both the Council and the OCC brought their administrative appeals from the final decision of the DPUC.

Cox and the DPUC move to dismiss the Council's appeal based upon a lack of subject matter jurisdiction because the Council is not aggrieved by the DPUC's decision.[1] As indicated, the Council filed its complaint on February 4, 2000, with a return date of March 7, 2000. In its complaint the Council stated that it "was the duly appointed advisory council for said franchise representing approximately 64,000 subscribers residing in the towns comprising said franchise, and performed the functions customarily delegated to such councils by the statutes and regulations of the State of Connecticut." (Complaint, ¶ 3.) In paragraph 11 of its complaint, the Council alleged that "[t]he Plaintiff is aggrieved by said decision" and listed as the grounds for reversal of the DPUC decision each of the sub-headings of General Statutes § 4-183(j). On April 5, 2000, the Council filed an "Amended Complaint." In paragraph 11 of this amended complaint, the Council sets forth a multitude of errors alleged to have been made by the DPUC in approving the franchise renewal.

To show aggrievement, the Council relies upon its amended complaint of April 5, 2000. The Council claims that General Statutes § 52-128 authorizes the amendment of a defect as of right within thirty days of the return date. The amended complaint cannot be considered by the court, however, as it was filed more than forty-five days beyond the mailing of the DPUC final decision. *Cf. Walnut Street Service, Inc. v. Commissioner of Motor Vehicles*, Superior Court, Judicial District of Hartford-New Britain at

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[1] Cox also raises federal preemption against the Council, but the court will not address this issue in light of the ruling on aggrievement.

Hartford, Docket No. CV 96-0562083 (November 6, 1996, Maloney, J.) There the original action was jurisdictionally defective and the plaintiff filed an amended complaint as an administrative appeal within the forty-five day time period of § 4-183(c). Judge Maloney found jurisdiction because the amended complaint was timely. Further under *Simko v. Zoning Board of Appeals*, 205 Conn. 413 (1987), *modified* 206 Conn. 374 (1988), General Statutes § 52-128 cannot be used to correct a complaint which is defective due to a lack of subject matter jurisdiction.

It is clear that under the February 4, 2000 complaint, the Council has not sufficiently alleged aggrievement. As the DPUC points out, under regulation and statute, the Council ahs the duty to advise the cable companies, file reports with the DPUC, intervene in DPUC contested cases and file petitions with the DPUC on behalf of customers being denied service. To be aggrieved, a plaintiff must meet a two-fold determination: "[F]irst, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision." *New England Cable Television Assn., Inc. v. Department* of *Public Utility Control*, 247 Conn. 95, 103 (1998).

The February 4, 2000, complaint does not plead any facts in relationship to its powers and duties to establish aggrievement in this franchise-renewal appeal. "Pleading and proof of facts that constitute aggrievement are essential prerequisites to the trial court's subject matter jurisdiction over an administrative appeal." *New England Rehabilitation Hospital of Hartford, Inc., v. Commission on Hospitals & Health Care*, 226 Conn. 105, 121 (1993). Merely alleging that a section of the Uniform

Administrative Procedure Act was not followed in its entirety is not sufficient to meet the pleading requirement.

> Pleading and proof of aggrievement was, of course, a prerequisite to the trial court's jurisdiction over the subject matter of the plaintiff's appeal. The question of aggrievement is essentially one of standing; unless the plaintiff could establish that she was aggrieved by the decision of the state standards committee, she had no standing to appeal. The trial court must be satisfied, first, that the plaintiff alleges facts which, if proven, would constitute aggrievement as a matter of law, and, second, that the plaintiff proves the truth of those factual allegations. The mere statement that the appellant is aggrieved, without supporting allegations as to the particular nature of the aggrievment, is insufficient.

Beckish v. Manafort, 175 Conn. 415, 419 (1978) (internal citations omitted). See also *Connecticut Attorneys Title Insurance Company v. Connecticut Insurance Department,* Superior Court, judicial district of New Britain, Docket N. CV 99 0496953 (March 6, 2000, Hartmere, J.): "The plaintiff's complaint, viewed even in a light most favorable to it, lacks any allegation as to the specific, personal and legal interest in the subject matter of the Department's decision nor does it allege how its specific personal legal interest has been specially and injuriously affected by the Department's decision."[2] The court concludes that the

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[2] Even if the court were to consider the plaintiff's amended complaint, the plaintiff has not corrected the defects of the original complaint. Other than a reference to "functions

Council's appeal must be dismissed in that the Council has not alleged facts showing aggrievment. The motions to dismiss filed by Cox and the DPUC are granted on this ground.

Cox also seeks to dismiss the action brought by the OCC. It first claims that the OCC is preempted from bringing its action by federal law. The Cable Communications Policy Act of 1984, P.L. 98-549, establishes a uniform procedure for renewal of cable franchises and for judicial review, should the cable franchise not be renewed. 47 U.S.C. §§ 546, 555. The legislative history of the Cable Act[3] provides at 75 that when the cable franchisee receives approval or renewal from the state or local regulator, no appeal is permitted by any other party. Cox stresses this language in arguing preclusion. The Cable Act, 47 U.S.C. § 556, however, provides that the Act does not preclude local regulation in existence at the time of the Act's adoption and not inconsistent with federal law. *See also* House Report at 94.

Amsat Cable v. Cablevision of Connecticut, 6 F.3d 867, 875 (2d Cir. 1993) adopts this rule as follows:

> In *Cable Television Ass'n of N.Y., Inc. v. Finneran*, 954 F.2d 91 (2d Cir. 1992), we set forth the applicable preemption standard: "Where there are persuasive indicia that Congress intended exclusive federal regulation of the sphere in question, then the

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customarily delegated to such councils by the statutes and regulations of the State of Connecticut (¶ 8) does not constitute the pleading of aggrievement.

[3] The parties to these appeals rely on the report of the House Energy and Commerce Committee No. 98-934, hereafter referred to as "House Report" for legislative history and interpretation.

> state act cannot stand. Absent such an intent, the state rule will only fall if it actually conflicts with the federal law."

Accord: Eastern Telecom Corp. v. Borough of East Conemaugh, 872 F.2d 30, 34 (3rd Cir. 1989); *Housatonic Cable Vision Co. v. Department of Public Utility Control*, 622 F. Sup. 798, 806 (D. Conn. 1985).

Here, the OCC was established as an independent agencey in 1975, nine years before the federal Cable Communications Policy Act. As set forth in § 16-2a, the OCC has a clear place in the regulatory scheme for the approval and renewal of cable franchises. Its mission is to act as a specialized intervenor on behalf of consumers. The protection of the consumer is a major goal of the federal Communications Policy Cable Act. House Report at 19. The OCC is therefore not precluded from pursuing its appeal.

Cox also raises the issue of whether the OCC is aggrieved. OCC alleges in its complaint that the DPUC, in renewing Cox's franchise, has incorrectly interpreted two statutes relating to public access. Using the standards set forth above, the OCC meets the first test of aggrievement. Pursuant to General Statutes § 16-2a(a),[4] it has by statute been given a specific, as opposed to a general, interest in the subject matter of the renewal decision. It also has demonstrated that its interest has been affected by a decision that could possibly lead to under-funding of public access providers in the service area. The OCC's charge from the legislature includes protecting consumers, and this encompasses those consumers who view public access programs through cable television. General Statutes § 16-331(d)(1); *United Cable Television Services Corp. v. Department of Public Utility Control*, 235 Conn. 334, 347 (1995).

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[4] There shall continue to be an independent Office of Consumer Counsel, within the Department of Public Utility Control for administrative purposes only, to act as the advocate for consumer interests in all matters which may affect Connecticut customers with respect to public service companies, electric supplier and persons, firms, and corporations certified, or seeking to be certified, to provide intrastate telecommunications service pursuant to sections 16-247f to 16-247h, inclusive. The Office of Consumer Counsel is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which

The court's conclusion here on OCC's aggrievement is no different from the Supreme Court's summary of trial court action in *Office of Consumer Counsel v. Department of Public Utility Control*, 234 Conn. 624, 636-37 (1995): "The court determined that the OCC had met the first part of the test on the basis of General Statutes § 16-2a (a), and concluded that the second part was satisfied due to the …increases [in rates] that the DPUC had approved…."

Finally, Cox contends that the OCC is collaterally estopped from contesting the methodology of the DPUC in its decision regarding public access. Cox relies on the DPUC dockets where the OCC participated and did not object to the DPUC's approach. However, Cox was not a party to the prior dockets. The DPUC approval here was

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such interest of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in this state may be involved. The Office of Consumer Counsel shall be a party to each contested case before the Department of Public Utility Control and shall participate in such proceedings to the extent it deems necessary. Said Office of Consumer Counsel may appeal from a decision, order or authorization in any such state regulatory proceeding notwithstanding its failure to appear or participate in said proceeding.

based upon unique facts in this record. As the court in *New England Rehabilitation Hospital of Hartford, Inc. v. Commission on Hospitals & Health Care*, supra, 226 Conn. 130, pointed out, collateral estoppel does not apply so as to bind one applicant to the findings of fact made in connection with another application. The same principle applies to negate Cox's argument that the OCC should be bound by positions taken in prior dockets involving other cable franchisees.

For the reasons stated above, the motions to dismiss *Cox Cable Advisory Council v. DPUC*, Docket No. CV 00 0500103, filed by Cox and the DPUC are granted. Cox's motion to dismiss *OCC v. DPUC*, Docket No. CV 00 0500104, is denied.

Henry S. Cohn, Judge

STATE OF CONNECTICUT

NO. CV 00 0500103S : SUPERIOR COURT
:
COX CABLE ADVISORY :
COUNCIL :
114 West Street :
Manchester, CT 06040 :
:
V. : JUDICIAL DISTRICT
:
DEPARTMENT OF PUBLIC:
UTILITY CONTROL : OF
10 Franklin Square :
New Britain, CT 06051; :
:
OFFICE OF CONSUMER :
COUNSEL : NEW BRITAIN
10 Franklin Square :
New Britain, CT 06051; and :
:
COXCOM, INC., DBA COX :
COMMUNICATIONS :
CONNECTICUT/ :
MANCHESTER :
170 Utopia Road :
Manchester, CT 06040 : NOVEMBER 17, 2000

Present: Honorable Henry Cohn, Judge

JUDGMENT

This action, in the nature of an appeal from a decision of the defendant Department of Public Utility Control, came to this court on March 7, 2000, and thence to later dates when the parties appeared and were at issue to the court, as on file, and thence to the present time.

The court, having heard the parties, grants the motions to dismiss filed by the defendants Department of Public Utility Control and CoxCom, Inc.

WHEREUPON, it is adjudged that the appeal be and it is hereby dismissed.

By the Court,

Joanne K. Murley
Court Officer

§ 521. Purposes

The purposes of this subchapter are to—

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

§ 531. Cable channels for public, educational, or governmental use

(a) Authority to establish requirements with respect to designation or use of channel capacity

A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b) of this section.

(d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b) of this section, the franchising authority shall prescribe—

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

(e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) "Institutional network" defined

For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

§ 541. General franchise requirements

(a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of service; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

(A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) In awarding a franchise, the franchising authority—

(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(b) No cable service without franchise; exception under prior law

(1) Except to the extent provided in paragraph (2) and subsection (f) of this section, a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this subchapter for the provision of telecommunications services; and

(ii) the provisions of this subchapter shall not apply to such cable operator or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this subchapter that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this subchapter with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 531 and 532 of this title, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Status of cable system as common carrier or utility

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d) Informational tariffs; regulation by States; "State" defined

(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to subchapter II of this chapter. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this subchapter shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term "State" has the meaning given it in section 153 of this title.

(e) State regulation of facilities serving subscribers in multiple dwelling units

Nothing in this subchapter shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

(f) Local or municipal authority as multichannel video programming distributor

No provision of this chapter shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

§ 544. Regulation of services, facilities, and equipment

(a) Regulation by franchising authority

Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this subchapter.

(b) Requests for proposals; establishment and enforcement of requirements

In the case of any franchise granted after the effective date of this subchapter, the franchising authority, to the extent related to the establishment or operation of a cable system—

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 546 of this title), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h) of this section, establish requirements for video programming or other information services; and

(2) subject to section 545 of this title, may enforce any requirements contained within the franchise—

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) Enforcement authority respecting franchises effective under prior law

In the case of any franchise in effect on the effective date of this subchapter, the franchising authority may, subject to section 545 of this title, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d) Cable service unprotected by Constitution; blockage of premium channel upon request

(1) Nothing in this subchapter shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC–17, or R.

(e) Technical standards

Within one year after October 5, 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

(f) Limitation on regulatory powers of Federal agencies, States, or franchising authorities; exceptions

(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this subchapter.

(2) Paragraph (1) shall not apply to—

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this subchapter; and

(B) any rule, regulation, or order under Title 17.

(g) Access to emergency information

Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

(h) Notice of changes in and comments on services

A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Disposition of cable upon termination of service

Within 120 days after October 5, 1992, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

§ 545. Modification of franchise obligations

(a) Grounds for modification by franchising authority; public proceeding; time of decision

(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise—

(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120 day period is extended by mutual agreement of the cable operator and the franchising authority.

(b) Judicial proceedings; grounds for modification by court

(1) Any cable operator whose request for modification under subsection (a) of this section has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 555 of this title.

(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that—

(A) it is commercially impracticable for the operator to comply with such requirement; and

(B) the terms of the modification requested are appropriate because of commercial impracticability.

(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(c) Rearrangement, replacement, or removal of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if—

(1) such service is no longer available to the operator; or

(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of Title 17, which the cable operator can document—

(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

(B) has not been specifically compensated for through a rate increase or other adjustment.

(d) Rearrangement of particular services from one service tier to another or other offering of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 543 of this title.

(e) Requirements for services relating to public, educational, or governmental access

A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) "Commercially impracticable" defined

For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

(June 19, 1934, c. 652, Title VI, § 625, as added Oct. 30, 1984, Pub.L. 98–549, § 2, 98 Stat. 2790.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98–934 and Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 4655.

Effective and Applicability Provisions

1984 Acts. Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98–549, set out as a note under section 521 of this title.

LIBRARY REFERENCES

American Digest System

Telecommunications ⚷449(5) to 449(6).
Key Number System Topic No. 372.

Corpus Juris Secundum

Telegraph, Telephone, Radio, and Television, see C.J.S. §§ 190, 195.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

Approval by franchising authority 2
Request for modification of franchise agreement 1

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1. Request for modification of franchise agreement

Under Cable Television Consumer Protection and Competition Act, cable television company timely filed with town its request for modification of franchise agreement between company and town, despite fact that company had already implemented changes sought through modification. Cablevision Systems Corp. v. Town of East Hampton, E.D.N.Y.1994, 862 F.Supp. 875, affirmed 57 F.3d 1062.

2. Approval by franchising authority

Cable Communications Policy Act did not require cable television franchisee to obtain municipal franchising authority's approval before replacing certain networks with others, where franchise agreement did not require provision of any specific broad category of programming. Jones Intercable, Inc. v. City of Stevens Point, Wis., W.D.Wis.1990, 729 F.Supp. 642.

§ 546. Renewal

(a) Commencement of proceedings; public notice and participation

(1) A franchising authority may, on its own initiative during the 6–month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator

under the franchise during the then current franchise term. If the cable operator submits, during such 6–month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) of this section unless—

(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b) Submission of renewal proposals; contents; time

(1) Upon completion of a proceeding under subsection (a) of this section, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to section 544 of this title, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision

(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether—

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Basis for denial

Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of this section shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section, pursuant to the record of the proceeding under subsection (c) of this section. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) of this section or on events considered under subsection (c)(1)(B) of this section in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) of this section occur after the effective date of this subchapter unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e) Judicial review; grounds for relief

(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title.

(2) The court shall grant appropriate relief if the court finds that—

(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

(f) Finality of administrative decision

Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) "Franchise expiration" defined

For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on October 30, 1984.

(h) Alternative renewal procedures

Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

(i) Effect of renewal procedures upon action to revoke franchise for cause

Notwithstanding the provisions of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

§ 552. Consumer protection and customer service

(a) Franchising authority enforcement

A franchising authority may establish and enforce—

(1) customer service requirements of the cable operator; and

(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

(b) Commission standards

The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

(1) cable system office hours and telephone availability;

(2) installations, outages, and service calls; and

(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

(c) Subscriber notice

A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 543(b)(6) of this title or any other provision of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(d) Consumer protection laws and customer service agreements

(1) Consumer protection laws

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this subchapter.

(2) Customer service requirement agreements

Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b) of this section. Nothing in this subchapter shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

(June 19, 1934, c. 652, Title VI, § 632, as added Oct. 30, 1984, Pub.L. 98–549, § 2, 98 Stat. 2796, and amended Oct. 5, 1992, Pub.L. 102–385, § 8, 106 Stat. 1484; Feb. 8, 1996, Pub.L. 104–104, Title III, § 301(g), 110 Stat. 117.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1984 Acts. House Report No. 98–934 and Statements by Legislative Leaders, see 1984 U.S.Code Cong. and Adm.News, p. 4655.

1992 Acts. Senate Report No. 102–92 and House Conference Report No. 10–862, see 1992 U.S. Code Cong. and Adm. News, p. 1133.

1996 Acts. House Report No. 104–204 and House Conference Report No. 104–458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

References in Text

Enactment of the Cable Television Consumer Protection and Competition Act of 1992, referred to in subsec. (b), probably means the date of enactment of Pub.L. 102–385, which was approved Oct. 5, 1992.

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Act June 19, 1934, c. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Amendments

1996 Amendments. Subsec. (c). Pub.L. 104–104, § 301(g), added subsec. (c) and redesignated former subsec. (c) as subsec. (d).

Subsec. (d). Pub. L. 104–104, § 301(g)(1), redesignated former subsec. (c) as (d).

1992 Amendments. Pub.L. 102–385 added reference to customer service in catchline, in subsec. (a) substituted provisions authorizing establishment and enforcement of certain requirements for provisions allowing enforcement provisions to be required as part of franchise, in subsec. (b) substituted provisions requiring establishment of standards for provisions relating to enforcement powers of franchising authority, and in subsec. (c) designated existing provisions as par. (1) and added par. (2).

Effective and Applicability Provisions

1992 Acts. Amendments by Pub.L. 102–385 effective 60 days after Oct. 5, 1992, see section 28 of Pub.L. 102–385, set out as a note under section 325 of this title.

1984 Acts. Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub.L. 98–549, set out as a note under section 521 of this title.

§ 555. Judicial proceedings

(a) Modification or renewal of franchises

Any cable operator adversely affected by any final determination made by a franchising authority under section 541(a)(1), 545 or 546 of this title may commence an action within 120 days after receiving notice of such determination, which may be brought in—

(1) the district court of the United States for any judicial district in which the cable system is located; or

(2) in any State court of general jurisdiction having jurisdiction over the parties.

(b) Available relief

The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) of this section and with the provisions of subsection (a) of this section.

(c) Review of constitutionality of sections 534 and 535

(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 534 or 535 of this title or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of Title 28.

(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 534 or 535 of this title or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

(June 19, 1934, c. 652, Title VI, § 635, as added Oct. 30, 1984, Pub.L. 98–549, § 2, 98 Stat. 2800, and amended Oct. 5, 1992, Pub.L. 102–385, §§ 7(a)(2), 23, 24(b), 106 Stat. 1483, 1500, 1501.)

§ 555a. Limitation of franchising authority liability

(a) Suits for damages prohibited

In any court proceeding pending on or initiated after October 5, 1992, involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) Exception for completed cases

The limitation contained in subsection (a) of this section shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

(c) Discrimination claims permitted

Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

(d) Rule of construction

Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

(June 19, 1934, c. 652, Title VI, § 635A, as added Oct. 5, 1992, Pub.L. 102-385, § 24(a), 106 Stat. 1500.)

§ 556. Coordination of Federal, State, and local authority

(a) Regulation by States, political subdivisions, State and local agencies, and franchising authorities

Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter.

(b) State jurisdiction with regard to cable services

Nothing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.

(c) Preemption

Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.

(d) "State" defined

For purposes of this section, the term "State" has the meaning given such term in section 153 of this title.

(June 19, 1934, c. 652, Title VI, § 636, as added Oct. 30, 1984, Pub.L. 98–549, § 2, 98 Stat. 2800, and amended Feb. 8, 1996, Pub.L. 104–104, § 3(d)(3), 110 Stat. 61.)

Sec. 4-183. Appeal to Superior Court. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.

(c) Within forty-five days after mailing of the final decision under section 4-180 or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, a person appealing as provided in this section shall serve a copy of the appeal on the agency that rendered the final decision at its office or t the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if that person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. Within that time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency rendered the final decision shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by (1) United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or (2) personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

(d) The person appealing, not later than fifteen days after filing the appeal, shall file or cause to be filed with the clerk of the court an affidavit, or the state marshal's return, stating the date and manner in which a copy of the appeal was served on each party and on the agency that rendered the final decision, and, if service was not made on a party, the reason for failure to make service. If the failure to make service causes prejudice to any party to the appeal or to the agency, the court, after hearing, may dismiss the appeal.

(e) If service has not been made on a party, the court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify each party not yet served.

(f) The filing of an appeal shall not, of itself, stay enforcement of an agency decision. An application for a stay may be made to the agency, to the court or to both. Filing of an application with the agency shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from which shall include the agency's findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of a n appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence any modifications, new findings, or decisions with the reviewing court.

(i) The appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the agency are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusion, or decisions are: (1) In violation of constitutional or statutory provision; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For purposes of this section, a remand is a final judgment.

(k) If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the agency decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action.

(l) In all appeals taken under this section, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that costs are allowed in judgments rendered by the Superior Court. No costs shall be taxed against the state, except as provided in section 4-184a.

(m) In any case in which a person appealing claims that he cannot pay the costs of an appeal under this section, he shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such fees, costs and necessary expenses, including the requirements of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render its judgment on the application, which judgment shall contain a statement of the facts the court has found, with its conclusions thereon. The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered.

Sec. 16-2a. Office of Consumer Counsel. (a) There shall continue to be an independent Office of Consumer Counsel, within the Department of Public Utility Control for administrative purposes only, to act as the advocate for consumer interests in all matters which may affect Connecticut consumers with respect to public service companies, electric suppliers and certified telecommunications providers. The Office of Consumer Counsel is authorized to appear in and participate in any regulatory or judicial proceedings, federal or state, in which such interests of Connecticut consumers may be involved, or in which matters affecting utility services rendered or to be rendered in this state may be involved. The Office of Consumer Counsel shall be a party to each contested case before the Department of Public Utility Control and shall participate in such proceedings to the extent it deems necessary. Said Office of Consumer Counsel shall be a party to each contested case before the Department of Public Utility Control and shall participate in such proceedings to the extent it deems necessary. Said Office of Consumer Counsel may appeal from a decision, order or authorization in any such state regulatory proceeding notwithstanding its failure to appear or participate in said proceeding.

(b) Except as prohibited by the provisions of section 4-181, the Office of Consumer Counsel shall have access to the records of the Public Utilities Control Authority and the Department of Public Utility Control, shall be entitled to call upon the assistance of the authority's and the department's experts, and shall have the benefit of all other facilities or information of the authority or department in carrying out the duties of the Office of Consumer Counsel, except for such internal documents, information or data as are not available to parties to the authority's proceedings. The department shall provide such space as necessary within the department's quarters for the operation of the Office of Consumer Counsel, and the department shall be empowered to set regulations providing for adequate compensation for the provision of such office space.

(c) The Office of Consumer Counsel shall be under the direction of a Consumer Counsel, who shall be appointed by the Governor with the advice and consent of either house of the General Assembly. The Consumer Counsel shall e an elector of this state and shall have demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public. The Consumer Counsel shall serve for a term of five years unless removed pursuant to section 16-5. The salary of the Consumer Counsel shall be equal to that established for management pay plan salary group seventy-one by the Commissioner of Administrative Services. No Consumer Counsel shall, for a period of one year following the termination of service as Consumer Counsel, accept employment by a public service company, a certified telecommunications provider or an electric supplier. No Consumer Counsel who is also an attorney shall in any capacity, appear or participate in any matter, or accept any compensation regarding a matter, before the Public Utilities Control Authority, for a period of one year following the termination of service as Consumer Counsel.

(d) The Consumer Counsel shall hire such staff as he deems necessary to perform the duties of said Office of Consumer Counsel and may employ from time to time outside consultants knowledgeable in the utility regulation field including, but not limited to, economists, capital cost experts and rate design experts. The salaries and qualifications of the individuals so hired shall be determined by the Commissioner of Administrative Services pursuant to section 4-40.

(e) Nothing in this section shall be construed to prevent any party interested in such proceeding or action from appearing in person or from being represented by counsel therein.

(f) As used in this section, "consumer" means any person, city, borough or town, that receives service from any public service company, electric supplier or from any certified telecommunications provider in this state whether or not such person, city, borough or town is financially responsible for such service.

(g) The Office of Consumer Counsel shall not be required to post a bond as a condition to presenting an appeal from any state regulatory decision, order or authorization.

(h) The expenses of the Office of Consumer Counsel shall be assessed in accordance with the provisions of section 16-49.

Sec. 16-35. Appeals to Superior Court. (a) Any person, including but not limited to a company, town, city, borough or corporation aggrieved by any order, authorization or decision of the Department of Public Utility Control, except an order, authorization or decision of the department approving the taking of land, in any matter to which such person was or ought to have been made a party or intervenor, may appeal therefrom in accordance with the provisions of section 4-183. Such person so appealing shall give bond to the state, with sufficient surety, for the benefit of the adverse party, in such sum as the department fixes, to pay all costs in case such person fails to sustain such appeal. No municipality or political subdivision shall be determined not to be aggrieved solely because there are other persons who are similarly affected by the order, authorization or decision of the department.

(b) Any person who may appeal an order, authorization or decision of the department under subsection (a) of this section who was an intervenor or, after timely application, was denied intervenor status to the department proceeding, shall be limited to raise on appeal only those issues that (1) such person addressed during the proceeding or were addressed in the final decision or (2) such person raised in his request for intervenor status if he was denied intervenor status.

Sec. 16-331. Certificate of public convenience and necessity. Advisory councils, Franchise terms. Regulations. Community needs assessment. (a) No person, association or corporation, or a municipality which owns or operates one or more plants for the manufacture or distribution of electricity pursuant to section 7-213, shall construct or operate a community antenna television system without having first obtained a certificate of public convenience and necessity from the Department of Public Utility Control certifying that the person, firm or corporation is qualified pursuant to the provisions of subsection (b) of this section to operate such a service within the territory specified in such certificate. The department may issue more than one such certificate for any franchise area or portion of a franchise area. Notwithstanding the provisions of section 33-645, any such certificate shall authorize the holder thereof to occupy public highways to the extent required to provide community antenna television system service. A certificate shall be issued only after written application for the same has been made to the department, accompanied by a fee of fifty dollars, and public hearing has been held thereon. No certificate shall be sold or transferred without the approval of the department. For due cause shown, the department may amend, suspend or revoke any such certificate. If a certificate is no exercised within two years from the date of issue, the department may revoke the certificate. The department may specify in the certificate at the time of issue and from time to time thereafter such terms and conditions as the public interest may require.

(b) In determining whether a new certificate shall be issued or an existing certificate transferred, the Department of Public Utility Control shall only take into consideration the suitability of the applicant or, if the applicant is a corporation, of its management, the financial responsibility of the applicant and the ability of the applicant to perform efficiently the service for which authority is requested. In the case of an application filed on or after October 1, 1981, (1) if the applicant or an affiliate thereof is the holder of one or more other certificates in the state, the department shall also consider the possible adverse effects of increasing the concentration of ownership of community antenna television systems and related services, which would result from granting the application and (2) suitability of the applicant shall include consideration of participating owners resident in the proposed service area as well as involvement in local civic and community activities. In considering concentration of ownership the department shall only take into account the following factors: (A) Federal and state antitrust and unfair trade practices laws, regulations and policies and (B) the reduced ability of the department to make comparisons with other certificate holders. In the case of an application filed on or after January 1, 1983, for the approval of the transfer of an existing certificate, the department shall also (i) consult with the advisory council established by regulation for the franchise area specified in the certificate and, (ii) if the applicant or an affiliate thereof is the holder of one or more other certificates in the state, consider the adequacy of the service provided by such holder in the franchise areas specified in such certificate or certificates. The department may adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection.

(c) (1) A representative of a community antenna television company issued a certificate of public convenience and necessity in accordance with this section shall, twice a year, arrange for and hold a meeting with the advisory council established, in accordance with regulations adopted by the department in accordance with chapter 54, for the franchise area served by such company. (2) The department shall designate an advisory council as an intervenor in any contested case before the department involving the community antenna television company which the council is advising. Such company shall provide to the chairperson of its advisory council a copy of any report, notice or other document it files with the department. If a community antenna television company fails or refuses to furnish adequate service to any customer, the advisory council for the franchise area served by the company may file a written petition with the department alleging the failure or refusal. The department shall hold a hearing on such petition and, not later than one hundred fifty days after receiving the petition, shall issue a written decision on the petition. The company shall thereafter furnish service to the customer in accordance with the conditions prescribed under the department's decision. (3) Each community antenna television company shall, every six months, provide on bills, bill inserts or letters to subscribers, and shall prominently post in the company's primary subscriber service area and community access facility, a notice indicating the name and an address of the chairperson of the company's advisory council and describing the responsibilities of the advisory council. Each such company shall provide its advisory council with an opportunity to review such notice prior to distributing or posting the notice.

(d) (1) An initial certificate issued prior to June 1, 1988, shall grant a franchise for fifteen years, provided that for certificates issued prior to January 1, 1975, the initial franchise term shall be deemed to end for four such companies each year, starting in 1989, in order of those companies having the highest gross revenues under chapter 211 or 212a during the calendar year ending December 31, 1982. An initial, renewal or transfer certificate issued on or after June 1, 1988, shall grant a franchise for a term of not less than five years and not more than ten years, except that under special circumstances, as described in subdivision (2), a franchise may be granted for a term of more than ten years but not more than fifteen years. The department shall have the discretion to determine the appropriate length of a franchise terms, initial, renewal or transfer, and in making its decision shall consider the following without limitation: (A) The operator's past performance in terms of meeting the needs of the cable-related community; (B) the operator's past performance in terms of complying with the material terms of the existing franchise; (C) the operator's compliance with department regulations and the general statutes; (D) the ability of the operator's management to properly operate the franchise; (E) the operator's effectiveness in dealing with consumer requests, complaints and billing questions or disputes; (F) the operator's effectiveness in dealing the advisory council; (G) the quality and diversity of the operator's programming; (H) the quality of the operator's community access programming, including public access, educational access and governmental access programming, in accordance with the provisions of subdivision (3) of this subsection; (I) the quality of the operator's equipment and facilities; (J) the operator's proposals for future extensions and upgrading to technologically advanced equipment, facilities and systems; (K) the operator's past performance in terms of meeting the needs of the cable-related community by providing African-American and Hispanic programming; (L) the operator's good faith efforts, as determined by the department, to provide service, when practicable, to all customers within the service area; (M) the operator's past performance in making available addressable converters, traps or other devices or services which enable subscribers to voluntarily block transmission of specific programming to their homes or places of business; and (N) the applicant's provision of innovative services, including audio services, information services, electronic publishing and information concerning the proceedings of the General Assembly and legislative committees.

(2) Under special circumstances, the department in its discretion, may issue, renew or transfer a franchise for a term of not more than fifteen years if the franchisee has committed itself, as outlined in the franchise agreement, to provide or maintain technologically advanced equipment, facilities and systems as determined by the department, to enhance and promote technologically advanced educational programming and to comply with specific quality of service standards, including, but not limited to, the time between installation and repair following a subscriber request, the

response time to consumer complaints and the quality of the operator's customer service policies and practices.

(3) In evaluating the quality of community access programming the department shall consider, without limitation, (A) compliance with federal laws governing noncommercial educational broadcast stations and public broadcast stations, and state laws governing community access, including, but not limited to, sections 16-333-31 to 16-333-36, inclusive, of the regulations of Connecticut state agencies; (B) compliance with the terms of the franchise certificate, which apply to community access and (C) compliance with requirements involving community access contained in any order of the department which applies to the community antenna television system.

(4) If the department, on or after June 1, 1988, approves the transfer of a certificate, the franchise term of such transferred certificate shall be the remaining duration of the franchise term originally granted unless the department grants a different term, the appropriate length of which shall be determined by the department under this subsection, if the department finds that the holder of the certificate has complied with the provisions of the Communications Act of 1934, 47 USC 546.

(5) The department shall adopt regulations in accordance with chapter 54, establishing procedures and standards for the renewal of certificates issued to community antenna television companies. Such regulations shall, without limitation, (A) incorporate the provisions of the Communications Act of 1934, 47 USC 546, (B) require the department to consult with the advisory council for the franchise area served by the certificate holder before making a decision concerning the renewal of the certificate, (C) require any holder of a certificate which is not renewed by the department to continue to operate the franchise for one year after the end of its term or until a successor is chosen and ready to assume control of the franchise,

whichever is sooner, (D) establish standards for the content of notices sent to cable subscribers concerning public hearings for franchise renewal proceedings which standards shall include, without limitation, the requirements specified in subdivision (6) of this subsection, (E) establish standards to ensure that the costs and expenses of a municipality constructing, purchasing or operating a community antenna television company are accurately attributed to such company, and (F) establish quality standards for the instructional and educational channels. The department shall adopt regulations pursuant to this subdivision in conjunction with the Commission for Educational Technology.

(6) Any community antenna television company which applies to the department for the renewal of a franchise shall: (A) Make available for public inspection a copy of the company's proposal for renewal at the town hall, each public library and the primary senior center, as determined by the chief executive official of each municipality of its franchise area and at the company's primary customer service center and community access facility, and (B) notify each subscriber of any public hearing for a franchise renewal, which notices shall be mailed by first class mail to each subscriber not less than fourteen days in advance of any public hearing and shall state in plain language the time, place, date, address and subject matter of the hearing, and in boldface print shall state that public participation is encouraged. The notice shall also provide information concerning the locations where the company's proposal for renewal may be reviewed, and shall not contain any billing, promotional or extraneous information.

(e) No certificate issued by the department under this section for the construction or operation of a community antenna television system shall be construed to authorize the provision of noncable communications service. For the purposes of section 16-247c, noncable communications service shall not be deemed to be service which is provided by a community antenna television company pursuant to a special charter or pursuant to a certificate of public convenience or necessity issued pursuant to this section. Nothing in this subsection shall be construed to affect service which is both authorized and preempted pursuant to federal law.

(f) Each applicant for a certificate shall finance the reasonable costs of a community needs assessment, conducted by an independent consultant and developed jointly by the department, the Office of Consumer Counsel, the local advisory council and the applicant, which assessment shall analyze a community's future cable-related needs and, if applicable, shall provide the department with assistance in analyzing an operator's past performance as defined in subsection (d) of section 16-3331. The department shall supervise the assessment and provide the independent consultant with the date upon which the assessment shall be completed and filed with the department. Such community needs assessment shall be conducted in lieu of the requirement in subdivision (12) of subsection (c) of section 16-333-39 of the regulations of Connecticut state agencies. The provisions of this subsection shall not apply to a franchise area which is subject to effective competition, as defined in 47 USC 543, as from time to time amended, at the time the application is received by the department.

(g) Each certificate of public convenience and necessity for a franchise issued pursuant to this section shall be nonexclusive, and each such certificate issued for a franchise in any area of the state where an existing franchise is currently operating shall not contain more favorable terms or conditions than those imposed on the existing franchise. This subsection shall not apply to the length of the term of such certification as may be determined pursuant to subsection (d) of this section.

(h) Each person, firm or corporation issued a certificate of public convenience and necessity by the Department of Public Utility Control pursuant to this section shall provide financial and infrastructure information to the department as it requests.

Sec. 16-331 a. Community access programming and operations. (a) As used in this section, "multichannel video programming distributor" means a multichannel video programming distributor, as defined in 47 CFR 76.1300, as from time to time amended, and includes an owner of an open video system, as defined in 47 CFR 76.1500, as from time to time amended.

(b) Each company or organization selected pursuant to subsection (c) of this section, in consultation with the franchise's advisory council, shall provide facilities, equipment, and technical and managerial support to enable the production of meaningful community access programming within its franchise area. Each company shall include all its community access channels in its basic service package. Each company or organization shall annually review its rules, regulations, policies and procedures governing the provision of community access programming. Such review shall include a period for public comment, a public meeting and consultation with the franchise's advisory council.

(c) If a community-based nonprofit organization in a franchise area desires to assume responsibility for community access operations, it shall, upon timely petition to the department, be granted intervenor status in a franchise proceeding held pursuant to this section. The department shall assign this responsibility to the most qualified community-based nonprofit organization or the company based on the following criteria: (1) The recommendations of the advisory council and of the municipalities in the franchise area; (2) a review of the organization's or the company's performance in providing community access programming; (3) the operating plan submitted by the organization and the company for providing community access programming; (4) the experience in community access programming of the organization; (5) the organization's and the company's proposed budget, including expenses for salaries, consultants, attorneys, and other professionals; (6) the quality and quantity of the programming to be created, promoted or facilitated by the organization or the company; (7) a review of the organization's procedures to ensure compliance with federal and state law, including the regulations of Connecticut state agencies; and (8) any other criteria determined to be relevant by the department. If the department selects an organization to provide community access operations, the company shall provide financial and technical support to the organization in an amount to be determined by the department. On petition of the Office of Consumer Counsel or the franchise's advisory council or on its own motion, the department shall hold a hearing, with notice, on the ability of the organization to continue its responsibility for community access operations. In its decision following such a hearing, the department may reassign the responsibility for community access operations to another organization or the company in accordance with the provisions of this subsection.

(d) Each company or organization shall conduct outreach programs and promote its community access services. Such outreach and promotion may include, but not be limited to (1) broadcasting cross-channel video announcements, (2) distributing information throughout the franchise area and not solely to its subscribers, (3) including community access information in its regular marketing publications, (4) broadcasting character-generated text messages or video announcements on barker or access channels, (5) making speaking engagements, and

(6) holding open receptions at its community access facilities.

(e) Each company or organization shall adopt for its community access programming a scheduling policy which encourages programming diversity. Said scheduling policy shall include (1) limiting a program, except instructional access and governmental access programming, to thirteen weeks in any one time slot when a producer of another program requests the same time slot, (2) procedures for resolving program scheduling conflicts, and (3) other measures which the company or organization deems appropriate. A company or organization may consider the availability of a substantially similar time slot when making community access programming scheduling decisions.

(f) In the case of any initial, transfer or renewal franchise proceeding held on or after October 1, 1990, the department may, on its own initiative, in the first six months of the second, fifth, eighth and eleventh years of the franchise terms, review and evaluate the company's or the organization's provision of community access programming. The department shall conduct such review or evaluation in any such proceeding held on or after October 1, 1990, if the Consumer Counsel or any interested party petitions the department for such a review during the first six months of the review year. During any such review year, if an organization desires to provide community access operations it shall petition the department and the department shall follow the procedures and standards described in subsection (c) of this section in determining whether to assign to the organization the responsibility to provide such operations. No community access programming produced using the facilities or staff of an organization or company providing community access operations shall be utilized for commercial purposes without express prior written agreement between the producer of such programming and the organization or company providing community access operations the facilities or staff of which were used in the production of the programming. Such an agreement may include, without limitation, a provision regarding the producer and the company or organization sharing any profit realized from such programming so utilized. An organization providing community access operations shall consult with the company in the franchise area prior to making such an agreement.

(g) No organization or company providing community access operations shall exercise editorial control over such programming, except as to programming that is obscene and except as otherwise allowed by applicable state and federal law. This subsection shall not be construed to prohibit such organization or company from limiting the hours during which adult programs may be aired. Such organization or company may consult with the advisory council in determining what constitutes an adult program for purposes of this subsection.

(h) Upon the request of the Office of Consumer Counsel or the franchise's advisory council, and for good cause shown the department shall require an organization responsible for community access operations to have an independent audit conducted at the expense of the organization.

(i) Each company and nonprofit organization providing community access operations shall report annually to the department on or before February fifteenth. The department shall adopt regulations, in accordance with the provisions of chapter 54, to specify the information which shall be required in such report. Such information shall be necessary for the department to carry out the provisions of this section.

(j) The advisory council shall review all community access programming of a company or organization within the franchise area which programming has been the subject of a complaint.

(k) The department shall establish the amount that the company or organization responsible for community access operations shall receive for such operations from subscribers and from multichannel video programming distributors. The amount shall be five dollars per subscriber per year, adjusted annually by a percentage reflecting the increase or decrease of the consumer price index for the preceding calendar year, provided the department may increase or decrease the amount by not more than forty per cent of said amount for the subscribers and all multichannel video programming distributors within a franchise area after considering (1) the criteria set forth in subsection (c) of this section, (2) the level of public interest in community access operations in the franchise area, (3) the level of community need for educational access programming, (4) the level and breadth of participation in community access operations, (5) the adequacy of existing facilities, equipment and training programs to meet the current and future needs of the franchise area, and (6) any other factors determined to be relevant by the department. Prior to increasing or decreasing said amount, the department shall give notice and opportunity for a hearing to the company or multichannel video programming distributor and, where applicable, the organization responsible for community access programming. The amount shall be assessed once each year for each end user premises connected to an open video system, irrespective of the number of multichannel video programming distributors providing programming over the open video system. When the department issues, transfers or renews a certificate of public convenience and necessity to operate a community antenna television system, the department shall include in the franchise agreement the amount that the company or organization responsible for community access operations shall receive for such operations from subscribers. The department shall conduct a proceeding to establish the amount that the company or organization responsible for community access operations shall receive for such operations from multichannel video programming distributors and the method of payment of said amount. The department shall adopt regulations in accordance with chapter 54 to implement the provisions of this subsection.

(l) An organization assigned responsibility for community access operations which organization ceases to provide such operations shall transfer its assets to the successor organization assigned such responsibility or, if no successor organization is assigned such responsibility, to another nonprofit organization within the franchise area selected by the department.

(m) On petition or its own motion, the department shall determine whether a franchise area is subject to effective competition, as defined in 47 USC 543, as from time to time amended. Upon a determination that a franchise area is subject to effective competition, the provisions of this section shall apply to multichannel video programming distributors operating in the franchise area, provided (1) where multichannel video programming distributors provide programming over a single open video system, the provisions of this section shall apply jointly and not separately to all such distributors providing programming on the same open video system, and (2) the provisions of subsection (k) of this section shall apply to multichannel video programming distributors whether or not such distributor operate in a franchise area subject to such effective competition.

(n) No community antenna television company or nonprofit organization providing community access operations shall refuse to engage in good faith negotiation regarding interconnection of such operations with other community antenna television companies serving the same area. No school or facility owned or leased by a municipal government that possesses community access operations equipment shall unreasonably deny interconnection with or the use of such equipment to any such company or nonprofit organization. At the request of such a company or nonprofit organization providing community access operations, the department may facilitate the negotiation between such company or organization and any other community antenna television company regarding interconnection of community access operations.

Sec. 16-331b. Members of community antenna advisory councils to serve without compensation. Members of community antenna advisory councils established pursuant to section 16-331 shall serve without compensation. For the purposes of this section compensation shall include the receipt of any free or discounted cable television service, either basic or premium.

Sec. 16-331c. Community antenna television companies' contribution to community antenna advisory councils. Each community antenna television company, as defined in section 16-1, shall annually contribute to the advisory council in its franchise area an amount not less than two thousand dollars. An advisory council may at its option receive any or all of its funding through in-kind services of the community antenna television company. Each advisory council shall annually, on January first, provide the Department of Public Utility Control with an accounting of any funding or services received.

Sec. 16-331d. Community antenna television advisory council vacancies and conflict of interest of members. (a) The chief elected official from the town in which a vacant seat exists on a community antenna television advisory council shall appoint a member to fill such vacancy if any other appointing authority fails to make an appointment within six months of the time in which a vacancy occurs. (b) No member of a community antenna television advisory council appointed by the chief elected official of a municipality, the board of education or the public libraries shall be an employee of a community antenna television company. For the purposes of this subsection, an employee includes any person working full or part time or performing any subcontracting or consulting services for the company.

Sec. 16-333f. Programming and rate changes. Regulatory authority. Industry cooperation. (a) Each community antenna television company shall inform the Department of Public Utility Control, each subscriber, the chairpersons of the joint standing committee having cognizance of matters relating to public utilities and the chairperson of the company's advisory council of any planned programming or rate changes not less than thirty days unless otherwise required by federal law prior to implementing such changes unless (1) such changes are required by law to be made in less than thirty days or (2) the department prescribes a longer or shorter notice period in appropriate circumstances where such longer or shorter notice period is in the best interest of the company's subscribers. The company's advisory council may hold an advisory public hearing concerning the planned changes and may then make a recommendation to the company prior to the planned implementation date. The department shall adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection.

(b) the Department of Public Utility Control shall file a written certification with the Federal Communications Commission for designation as the franchising authority exercising the regulatory authority permitted under the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385.

(c) The Department of Public Utility Control shall encourage cooperation between community antenna television companies and local television broadcast stations in order to further the public interest concerning the provision of video programming and community antenna television services, thus ensuring the widest possible range of programming choices for all residents of the state at the lowest possible cost to all residents of the state.

Sec. 16-3331. Company offerings and charges. Billing and billing dispute procedures. (a) Each community antenna television company, as defined in section 16-1, shall provide each subscriber with a description of all premium and basic service offerings, a list of premium and basic service rates and all service-related charges, information on equipment operation, including the availability of addressable converts, traps or other devices or services which enable subscribers to voluntarily block transmission of specific programming to their homes or places of business, and a description of the company's customers credit policies, including any finance charges or late payment charges, at the time of the initial subscription and at least annually thereafter.

(b) Each such company shall provide each subscriber with a description of the company's billing practices at the time of the initial subscription and at least annually thereafter. Such description shall include billing period and frequency, security deposit requirements, late payment charges, returned check charges, credits for service outages, pay-per-view billing procedures, charges and billing procedures for the use of addressable converters, traps or other devices or services which enable subscribers to voluntarily block transmission of specific programming to their homes or places of business and such other items as the Department of Public Utility Control may require. Each company shall file a copy of its billing practices with the department and shall give notice to the department and each subscriber not less than forty-five days prior to implementing any changes in such practices. Every bill to subscribers of a community antenna television service shall contain (1) the date on which any individually chargeable service is rendered, (2) each rate or charge levied, (3) the amount due for the current billing period separate from any prior balance due, (4) the specific date by which payment is due, (5) such other times as the department may require, (6) the company's telephone numbers, including any toll-free numbers, (7) the Department of Public Utility Control's consumer assistance telephone number and (8) the mailing address of the company's advisory council. Each company shall provide each subscriber, quarterly, with a summary of the procedures for resolving subscriber complaints and for providing refund or credit for service interruptions, pursuant to section 16-333e, and a notice indicating that, pursuant to subsection (b) of section 16-333i, the company is required to restore interrupted service not later than twenty-four hours after being notified by a subscriber that service has been interrupted. Each bill insert or letter to subscribers, other than promotional material, shall contain the company's telephone numbers, including any toll-free numbers or any other free calling option, as approved by the department and the Department of Public Utility Control's consumer assistance telephone number. Each advisory council, in conjunction with the company, shall notify subscribers of the time and place of any upcoming advisory council meeting, of any vacancies that may exist on the advisory council and of the name of the council chairperson and address of the advisory council The notification may be provided via the community antenna television system at a sufficient frequency that subscribers may reasonably be expected to become aware of the meeting or by publishing on a quarterly basis the information in a newspaper having general circulation within each municipality in the franchise area.

(c) No community antenna television company shall issue a bill which contains a statement that payment is due upon receipt. The payment due date of any subscriber's bill shall be no earlier than twenty-five days after the issue date of such bill. No community antenna television subscriber's account shall be considered delinquent until at least twenty-five days have elapsed from the billing date contained in the subscriber's bill. No community antenna television company may impose a late charge or terminate service on account of nonpayment of a delinquent account less than forty-five days from the original billing date. In order to terminate service, a company shall first give notice of such delinquency and impending termination at least fifteen days prior to the imposition of the proposed late charge or the termination, by first class mail addressed to the subscriber. The fifteen-day period shall commence from the date the notice is mailed, provided no notice may be mailed until at least thirty days have elapsed from the billing date contained in the subscriber's bill. No such company may impose a late charge greater than eight per cent per annum of the balance due or any such rate as determined by the department. Any returned check charge imposed by such company shall be reasonably related to the company's actual cost of processing returned checks.

(d) Any community antenna television subscriber shall have not less than forty-five days from the billing date contained in the subscriber's bill in which to register a complaint with a community antenna television company with respect to any billing error or dispute. A billing complaint may be registered in person at the company's business office, by telephone or by mail. The company shall promptly investigate the billing complaint, shall provide an initial response to the subscriber not later than three days after receipt thereof and shall provide a written proposal of the disposition of the complaint to the subscriber not later than fifteen business days following the company's receipt of the complaint. The subscriber, after receiving he company's proposed disposition of the complaint, shall have ten days to contest the disposition and may present the company with additional information concerning the complaint. In the event the subscriber contests the proposed disposition, the company shall review any additional information, if provided, and shall notify the subscriber of the company's final disposition within fifteen days. No community antenna television company may effect termination of service to the subscriber for nonpayment of disputed bills during the pendency of any billing complaint, provided the subscriber shall pay current and undisputed bill amounts during the pendency of the complaint. The Department of Public Utility Control, upon the written request of the subscriber, may review the company's disposition of a billing complaint in accordance with such procedures as the department shall prescribe and make such orders as the department deems reasonable and necessary to finally resolve the complaint.

(e) The Department of Public Utility Control shall adopt regulations, in accordance with the provisions of chapter 54, to administer the provisions of this section.

Sec. 52-128. Amendment of pleadings by plaintiff; costs. The plaintiff may amend any defect, mistake or informality in the writ, complaint, declaration or petition, and insert new counts in the complaint or declaration, which might have been originally inserted therein, without costs, within the first thirty days after the return day and at any time afterwards on the payment of costs at the discretion of the court; but, after any such amendment, the defendant shall have a reasonable time to answer the same.

CABLE COMMUNICATIONS POLICY ACT OF 1984
House Report No. 98-934
Energy and Commerce Committee
(Excerpt from page 75)

A cable operator adversely affected by a franchising authority's failure to comply at any time with the procedural requirements of this section or whose proposal for renewal is denied may appeal to state court or to the U.S. District Court under the provisions of section 636. If a franchising authority grants renewal, but subject to specified conditions which the operator refuses to accept, the operator may appeal that decision as if it were a denial. If the incumbent is granted renewal pursuant to his proposal, there is no right of appeal by any other party.

Francis J. Drumm, Jr.
Chief Clerk
860-757-2200

SUPREME COURT
APPELLATE COURT

231 Capitol Avenue
Drawer Z, Station A
Hartford, CT 06106

June 11, 2001

AC 21472 Cox Cable Advisory Council v. DPUC et al.

Dear Counsel:

Pursuant to §65-1, the Supreme Court has transferred the captioned Appellate Court appeal to itself. The Supreme Court docket number assigned is **SC 16538**. Use only the Supreme Court number for your appeal on all future filings.

Briefing is in accordance with P.B. §67-1. **If briefs and/or the record have been filed, (12) twelve additional copies, in their original format, are due seven days from this notice date.** We will put stickers on to correct the covers.

Your new case manager is Attorney Francis J. Drumm, Jr. He may be reached at 860-757-2219. If he is unavailable, you may wish to speak to Pam Brannick, the paralegal who works on Supreme Court appeals.

Very truly yours,

Assistant Clerk-Appellate

Notice sent: June 11, 2001
Pizzella & Pizzella
Robert L. Marconi, A.A.G.
Office of Consumer Counsel
Murtha Cullina, LLP
New Britain Superior Court (CV00-0500103)

dcm